REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 925 OF 2009

Prem Singh ... Appellant(s)

Versus

State of Haryana ... Respondent(s)

J U D G M E N T

RANJAN GOGOI, J.

1. The appellant, Prem Singh, alongwith six others was charged for various offences punishable under the Indian Penal Code (IPC), 1860 and the Arms Act, 1959, including, the offence under Section 302 read with Section 149 IPC. Two of the accused, namely, Satish Kumar and Surinder, were acquitted even prior to the recording of their statements under Section 313 Code of Criminal Procedure (Cr.P.C). The remaining five accused, including the present appellant, were acquitted by the learned Trial Court at the conclusion of the trial by order dated 5.4.1997. Aggrieved,

the State had filed an appeal before the High Court of Punjab & Haryana. The High Court by judgment and order dated 12.5.2008 reversed the acquittal insofar as the present appellant Prem Singh and another accused, i.e., Vishwa Bandhu is concerned. Both the aforesaid accused persons were convicted under Section 302 read with Section 34 IPC and have been sentenced to undergo rigorous imprisonment for life. The appeal of the State in respect of the remaining three accused, namely, Daulat Ram, Ballu and Radhey Shyam was dismissed. Aggrieved by his conviction and the sentence imposed, the appellant, Prem Singh, has filed the present appeal.

2. The case of the prosecution, in short, is that on 26.11.1993 at about 6.30/6.45 a.m. when PW-16 Sohan Lal was present in his house, one Vijay Kumar, a neighbour, came and informed him that his elder brother Siri Krishan who had gone for a morning walk has been shot at by some persons who had come in a Maruti car. On receipt of the said information from Vijay Kumar, who claimed to have witnessed the occurrence, PW-16 alongwith his nephew

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Navneet Kumar went to the spot and found Siri Krishan lying in a pool of blood. The injured was removed to the government hospital at Karnal where he was declared "brought dead". According to the prosecution, on the basis of the information sent to the police by the doctor in the government hospital, PW-24 SI Gurcharan Singh arrived in the hospital and recorded the statement of PW-16 Sohan Lal to the above effect (Exh.PQ). On the basis of the said statement a FIR was registered which was investigated initially by PW-23 Inspector Om Prakash and thereafter by PW-24 SI Gurucharan Singh and PW-27 Inspector Gordhan Singh. In the course of investigation the seven accused persons including the appellant were arrested and recovery of fire arms was allegedly effected at the instance of accused-appellant and co-accused Ballu. From the place of occurrence several empty cartridges and lead bullets were recovered. 3 bullets were also recovered from the dead body in the course of the post-mortem examination. The same alongwith fire arms allegedly recovered at the instance of the two accused were sent for forensic examination. On

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completion of the investigation the accused persons including the present appellant were chargesheeted and the case was committed for trial to the Court of Sessions at Karnal. Charges under Sections 120-B, 148, 302 read with Section 149 of the Indian Penal Code and Section 25 of the Arms Act were framed against the accused. While the trial ended in the acquittal of all the accused persons the same has been reversed by the High Court in respect of the two accused persons, namely, Prem Singh and Vishwa Bandhu. Challenging the order of the High Court this appeal has been filed by accused-appellant Prem Singh.

3. The appeal was initially heard by a Bench of two Hon'ble Judges. However, there being a difference of opinion between the Hon'ble Judges the matter required consideration by a larger Bench. This is how the appeal has come to be posted before us.

4. We have heard Mr. D.B. Goswami learned counsel for the appellant and Mr. Suryanaryana Singh, learned Addl. Advocate General for the State of Haryana.

5. Having regard to the fact that in the instant case the High Court had thought it proper to reverse the order of acquittal passed by the learned Trial Court it will be appropriate to notice, though very briefly, the virtually settled position in law with regard to the power of the Appellate Court to reverse an order of acquittal passed by a Trial Court. In a recent decision in ***Murugesan v. State Through Inspector of Police***[1] this Court had the occasion to consider the broad principles of law governing the power of the High Court under Section 378 of the Code of Criminal Procedure, 1973. The summary of the relevant principles of law set out in para 21 of the judgment may be extracted hereinunder:

> "**21.** A concise statement of the law on the issue that had emerged after over half a century of evolution since *Sheo Swarup*[2] is to be found in para 42 of the Report in *Chandrappa* v. *State of Karnataka*[3]. The same may, therefore, be usefully noticed below:
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> > "*42*. From the above decisions, in our considered view, the following general principles regarding powers of the appellate

[1] (2012) 10 SCC 383
[2] Sheo Swarup v. King Emperor, (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)
[3] (2007) 4 SCC 415

court while dealing with an appeal against an order of acquittal emerge:

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

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

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

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> (*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*."**(Emphasis supplied)**

6. It is in the light of the above principles of law that the reasoning and conclusions of the High Court that will have to be analysed so as to determine the correctness of the view taken by the High Court in the present case. To facilitate the aforesaid exercise the manner in which the learned Trial Court had arrived at its conclusions in the matter may be usefully noticed in the first instance.

7. Vijay Kumar, who according to PW-16 Sohan Lal, came and informed him about the incident was not examined by the prosecution. The above fact assumes significance in as much as from the statement of PW-16 recorded in the hospital (Exh.PQ) it would appear that Vijay Kumar had witnessed the occurrence. The learned Trial Court took note of the above facts and also that the statement of the aforesaid Vijay Kumar was recorded by the Investigating Officer only on 28.3.1994 and that too on account of an

objection raised by the public prosecutor prior to the filing of the chargesheet (Challan) before the Court. The public prosecutor had tried to justify the non-examination of Vijay Kumar by contending that it was not Vijay Kumar but his daughter who had witnessed the occurrence. Considering the aforesaid contention the learned Trial Court held that even if the same is to be accepted the daughter of Vijay Kumar should have been examined as a witness. However, the evidence of Investigating Officers PW-23 Insp. Om Prakash, PW-24 SI Gurcharan Singh and PW-27 Insp. Gordhan Singh make it clear that none of the members of the family of Vijay Kumar were examined and no statement of any family member was recorded.

8. The learned Trial Court came to the conclusion that there is ample room to doubt whether PW-11 Sohan Lal and PW-12 Bharat Lal, who were examined by the prosecution as eye witnesses, had actually witnessed the occurrence. Both the aforesaid two witnesses had come to Karnal (in Haryana) from Sunam in Punjab about two months prior to the incident and in the month of March, 1994 they had shifted back to

Sunam from where they had come. In this regard the Trial Court specifically noticed that both the witnesses were not able to give any specific address in Karnal; they had not received any summons to appear as witnesses and had so appeared at the request of the son of the deceased. Furthermore, PW-11 Sohan Lal claimed to be an employee of the brother of PW-13 Smt. Pushpa Devi who is the wife of the deceased. Both PW-11 and PW-12 claimed that they knew the deceased from before and that the house of the deceased was very near to the place of occurrence. Yet, PW-11 and PW-12 did not go to the house of the deceased to inform the family members of the incident; neither did they report the incident to the police. Instead, they were roaming around aimlessly in the streets of Karnal until they came to the place of occurrence at 1.30 p.m. when their statements were recorded by the police. The aforesaid facts, according to the learned Trial Court, cast a serious doubt with regard to the presence of PW-11 Sohan Lal and PW-12 Bharat Lal at the scene of the occurrence.

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9. Furthermore, the learned Trial Court on the basis of the evidence adduced before it held the recovery of the weapons at the instance of the accused-appellant and co-accused Ballu to be highly doubtful inasmuch as though the weapons were not concealed under the earth, no recovery was made from the spot on 21.09.1994; yet, on 22.1.1994 and 23.1.1994 the two fire arms were recovered allegedly at the instance of the accused-appellant Prem Singh and co-accused Ballu respectively. In this regard the Trial Court also noticed that according to the report (Exh.PAK) of the Deputy Director, Forensic Science Laboratory, Madhuban no linkage could be established between the bullets recovered from the dead body and the fire arms allegedly recovered at the instance of the accused both of which were sent for forensic examination. The learned Trial Court also noticed that PW-11 and PW-12 had identified the accused including the present appellant for the first time in Court. It was also held that the refusal of the accused to cooperate and take part in the test identification parade could not be held adversely against the accused on account of the fact that

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even earlier to the proposed test identification parade the accused were shown to PWs 11 and 12 and also to the son of the deceased.

10. In addition to the above, the Trial Court also noticed significant discrepancies in the evidence of PWs 11 and 12, particularly, with regard to the identity of the accused who had held the deceased while the two accused, i.e., accused-appellant Prem Singh and co-accused Vishwa Bandhu allegedly fired at the deceased. In this regard PW-11 in his evidence had named accused Bijender Singh alias Ballu as the person who held the deceased from behind whereas PW-12 Bharat Lal had named accused Satish. The fact that the evidence of PWs 11 and 12 on the above aspect of the case is belied by the evidence of PW-3 (Dr. N.K.Bhandwal) and PW-25 (Dr. R.K.Kaushal) had also been taken note by the learned Trial Court. Both PWs 3 and 25 had stated that all the shots could not have been fired on the deceased if he had been held by a third person. The above is the broad basis on which the order of acquittal passed by the learned Trial Court was founded.

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11. The parameters within which the High Court was required to exercise its powers under Section 378 of the Code while hearing the State's appeal have already been noticed. If a conclusion with regard to the innocence of the accused is reasonably possible on the basis of the evidence and materials on record the High Court ought not to have disturbed the findings recorded by the Trial Court, even if, on a re-appreciation of the evidence, it was inclined to take a different view. So long the view taken by the Trial Court was a possible view the exercise of the appellate power of the High Court under Section 378 CrPC would remain circumscribed by the well settled parameters.

12. In the present case, the learned Trial Court for the reasons noticed came to the conclusion that the accused before it should be acquitted. An inference adverse to the prosecution on account of non-examination of the person who could be the star witness for the prosecution, namely, Vijay Kumar; the inherent lacunae in the evidence of PWs 11 and 12; the doubt and suspicion with regard to the bonafides of the recovery of the fire arms; the failure of the

prosecution to establish the linkage between the weapons recovered and the bullets extracted from the body of the deceased are facts and conclusions that can be reasonably reached on the basis of the evidence and materials on record. If the aforesaid conclusions are possible to be reached and we are inclined to so hold, the same cannot be characterized as unreasonable or perverse so as to justify the interference made by the High Court.

13. Furthermore, a reading of the order of the High Court indicates that the reversal made was entirely on the basis of the evidence tendered by PWs 11 and 12. The High Court seems to have accepted the versions narrated by the aforesaid two witnesses without considering the shortcomings inherent therein which made their presence at the place of occurrence highly doubtful, facts that had been elaborately noted by the learned Trial Court in its order. The mere claim of the prosecution that PW-11 Sohan Lal and PW-12 Bharat Lal were eye witnesses to the occurrence could not have been sufficient for the High Court to treat the ocular version of the said witnesses as the undisputed

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version of the occurrence. The High Court did not test the prosecution claim in the backdrop of the totality of the facts of the case. Having done so, we arrive at a different conclusion and, therefore, take the view that the High Court was not justified in reversing the acquittal of the accused-appellant Prem Singh. We, therefore, set aside the order of the High Court insofar as the present appellant is concerned and restore the order of acquittal passed by the learned Trial Court. The appeal is consequently allowed. If the appellant is presently in custody he be released

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forthwith unless his custody is required in connection with any other case.

.....CJI.
[P. SATHASIVAM]

.....J.
[RANJANA PRAKASH DESAI]

.....J.
[RANJAN GOGOI]

NEW DELHI
SEPTEMBER 2, 2013

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ITEM NO.1-B COURT No.14 Section IIB
(For Judgment)

S U P R E M E C O U R T O F I N D I
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No.925 OF 2009

Prem Singh **Appellant(s)**

Versus

State of Haryana **Respondent(s)**

DATE 02/09/2013 This matter was called on for pronouncement of judgment today.

For Appellant(s) **Mr. D.B. Goswami, Adv.**
Mr. K.H. Nobib Singh, Adv.

For Respondent(s) **Mr. Suryanarayana Singh, Adv.**
Ms. Pragati Neekhra, Adv.

Hon'ble Mr. Justice Ranjan Gogoi pronounced the judgment of the Bench comprising Hon'ble the Chief Justice, Hon'ble Mrs. Justice Ranjana Prakash Desai and His Lordship.

The appeal is allowed. If the appellant is presently in custody he be released forthwith unless his custody is required in connection with any other case.

(Usha Bhardwaj) **(Usha Sharma)**
(AR-cum-PS) **(Court Master)**

[Signed reportable judgment is placed on the file]

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