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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 3rd August, 2026.

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+ CRL.A. 461/2018 & CRL.M.A. 14242/2024

THE STATE NCT OF DELHI

..... Appellant

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav, Adv. with SI
Pradeep Singh.

versus

RAJENDER SINGH & ANR.

.....Respondents

Through: Mr. Sakesh Kumar and Ms. Gitanjali
N. Sharma Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE VIKAS MAHAJAN

JUDGEMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the State under Section 378 (1) of the Code of Criminal Procedure, 1973 (hereinafter, 'Cr.P.C') assailing the judgment dated 19th July, 2017 passed by the Id. Additional Sessions Judge-03(East), Karkardooma Courts, Delhi in **Sessions Case No. 1628/2016**. The case arises out of **FIR No. 15/2005** registered at PS. New Ashok Nagar.

Background

3. The incident in this case occurred on 12th January 2005 when a call was received, as recorded in Daily Diary No. 24A i.e., Ex. PW-6/A, that one Mr. Rakesh Kumar Gupta had suffered gunshot injuries at his Shop No. C-1/218



New Kondli, Mangal Bazar Chowk, Delhi by two persons.

4. After causing gunshot injuries to Mr. Rakesh Kumar Gupta, the said persons fled from the site, leaving behind one country-made pistol, *i.e.*, *katta*, at the site. Thereafter, ASI Mohd. Aftab and Ct. Upender visited and inspected the site and prepared the seizure memo of the country-made pistol.

5. Mr. Rakesh Kumar Gupta was taken to Metro Hospital wherein the MLC was prepared *i.e.*, Ex. PW-3/A. At that stage, the doctor had certified that the injured was unfit for making a statement due to excessive bleeding and severe pain. The injuries recorded in the MLC of the injured are as under:-

- 1) Entry wound in the left Zygoma with haematoma left cheek;
- 2) Entry and exit wound posterior upper 1/3 of left humerus; and
- 3) Entry wound right forearm below left condyl of humerus with a palpable bullet, one bullet was also found among the patient's clothes.

6. Thereafter, the stained clothes of the injured were seized from the Metro Hospital along with the bullets. Two days later *i.e.*, on 14th January 2005, the injured gave his statement under Section 161 Cr.P.C. Pursuant to the said statement, the Respondents, namely Rajender Singh and Virender Singh Rawat were arrested on 15th January 2005. Both the Respondents are stated to be residents of New Ashok Nagar and were known to the injured.

7. The charge-sheet was filed against the Respondents for offences committed punishable under Sections 307/452/34 of the Indian Penal Code, 1860 (hereinafter, '*IPC*') and Sections 27/54/59 of the Arms Act, 1959. The order-on-charge was passed on 26th February 2009 and charges were framed under the abovementioned provisions. A separate charge under Section 27 of the Arms Act, 1959 was also framed against Virender Singh Rawat.

8. Both the Respondents pleaded not guilty and the trial was then



conducted. The prosecution had examined 26 witnesses including the injured himself who appeared as PW-2. PW-7: Deepak@Manoj and PW-14: Saleem@Sunil are stated to be the eye-witnesses.

9. The Trial Court analyzed the evidence of PW-2, i.e., the injured and came to the conclusion that his testimony was not credible, as there were several contradictions and improvements in comparison to his initial statement under Section 161 Cr.P.C. and the supplementary statements. According to the Trial Court, various new facts were added by PW-2 in his supplementary statements. A detailed analysis was done by the Trial Court of the three statements made by PW-2 dated 14th January 2005, 2nd June 2005 and 20th September 2005

10. The Trial Court ultimately came to the conclusion that the testimony of PW-2 does not inspire confidence. Relevant portions of the impugned judgment of the Trial Court on this aspect are set out below:-

40. On being confronted, PW-2 improved his version in material particulars and contradicted from his earlier statement recorded as Ex.PW2/DA dated 14.01.2005. He improved his version from his supplementary statements Ex.PW2/A and Ex.PW2/B dated 02.06.2005 and 20.09.2005 respectively. In his supplementary statements, PW-2 introduced a new story by stating that the accused persons had made demands for effecting compromise in case FIR no.42/03 u/s 302 IPC. In Ex.PW2/DA and PW2/A, PW-2 stated that accused Rajender Singh and his father Karan Singh created obstacles at the time of construction of his (PW-2) school. He stated that in the year 1991, accused Rajender Singh and his father had verbal altercation with his (PW-2) brothers and he (PW-2) was falsely named by them but lateron, issue was settled. He stated that since then, he came to know about accused



Rajender Singh and his father. He stated that it was habit of Karan Singh to quarrel and then to present himself as witness to quarrel and later to withdraw after receiving money. He stated that the accused Rajender Singh and his father had falsely involved him (PW-2) in murder case in case FIR no.42/03 u/s 302/34 IPC. He stated that to end that case, accused Rajender Singh demanded Rs.12.00 lakh from him (PW-2). On 17.11.2004, Karan Singh sent accused Rajender Singh and Virender Singh to the court to discuss regarding compromise in that case, but PW-2 refused to give money. PW-2 stated that this was the reason of the assault upon him on 12.01.2005. PW-2 did not state all these facts in his evidence. He stated that he had given many complaints to the police regarding the money demands of accused persons. Despite opportunities given to him, he could not produce any of his alleged complaints prior to 12.01.2005 with police regarding such money demands. Thus, PW-2 blatantly failed to substantiate his version of money demands at the hands of the accused persons to effect compromise, which as per him had resulted into the assault upon him by them. He improved his version in evidence by stating facts, which were not earlier mentioned. While it is true that every improvement is not fatal to the prosecution case, in cases where the improvement create a serious doubt about the truthfulness or credibility of a witness, the same goes in favour of defence. [Ashok Vishnu Davare Vs. State of Maharastra, (2004) 9 SCC 431; Radha Kumar Vs. State of Bihar, (now Jharkhand), (2005) 10 SCC 216 & recent Apex Judgments (R.A.J.) 453].

41. PW-2 introduced new facts in his subsequent statements Ex.PW2/DA and Ex.PW2/A, reason for which remained inexplicable. The testimony of PW-2 raises doubts as to the veracity of the facts on account of improvements and contradictions. This is particularly so, when the dubious character of PW-2 has been assailed on the ground of his antecedents. Under such



circumstances, his evidence cannot be considered to be safe to rely on as it does not pass the test of credibility.

...

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47. In such circumstances, I find that the testimony of injured-PW-2 does not inspire confidence and he seems to be an interested witness. His testimony required independent corroboration, which the prosecution has failed to bring forth on record.”

11. The Trial Court also analyzed the evidence of PW-7, who was from the neighbourhood and PW-14, who was the driver of PW-2. The Trial Court further analyzed the statement of PW-13: Mukesh Gupta *i.e.*, brother of the injured. According to the Trial Court, the testimony of PW-25: SI (Retd.) Mohd. Aftab, *i.e.*, the Investigation Officer, was in contradiction with the testimony of PW-13. The Trial Court also castigates the Investigating Officer to the effect that no public person was made to join the investigation to give independent evidence though there were several members of the public who were present at the site.

12. The Trial Court also records certain discrepancies in the FSL reports and the custody of the materials which were sent to the FSL for examination. The Trial Court then observes that there is a strong doubt of manipulation of the case property and possibility of foul play.

13. Further, the Trial Court also records that the alleged family rivalry, arising out of the death of Shri Balbir Singh, brother of Shri Virender Singh, would have no bearing as it is a double edged sword. By itself it may not be enough to establish the guilt of the Respondents. The overall conclusions of the Trial Court are as under:-

“60. The plea of Ld. Addl. P.P. that the accused persons



were nursing a grudge against the injured for revenge is of no help. The admitted position of law is that enmity is a double edged weapon which can be a motive for the crime as well as the ground for false implication of the accused persons. Having scrutinized the testimony of witnesses with anxious care and in view of my findings as discussed above, I hold that the evidence on record is not sufficient to bring home the guilt of both accused. The weapon of offence could not be connected to accused persons. There is no material on record to connect that the gunshot injuries suffered by injured were due to the shot fired from the firearm Ex.P-1. The matter remained in the realm of suspicion. The suspicion, howsoever grave, cannot take place of proof. It is well settled proposition of law that when genesis and manner of the incident is in doubt, the accused are entitled for benefit of doubt.

61. *The result of the aforesaid discussion is that prosecution has not been able to establish the guilt of accused persons beyond reasonable doubts. As such, both accused are entitled to get benefit of doubt.”*

14. The Trial Court, thus, *vide* the impugned judgment acquitted the Respondents, Virender Singh Rawat and Rajender Singh. This impugned judgment dated 19th July, 2017 has been challenged by the State in the present appeal.

Submissions on behalf of the Parties

15. The submission of Mr. Bahri, Id. APP for the State is that the incident in the present case took place on 12th January, 2005 and the prosecution had examined more than 26 witnesses, out of which PW-2 was himself the injured. Id. APP submits that PW-7 and PW-14 were the two eye witnesses, PW-17 was a witness from the FSL and PW-3 and PW-4 were the doctors, who proved the two MLCs of the injured.



16. It is his submission on behalf of the State that PW-2 was a property dealer and he has given the following statements:

- Statement dated 14th January, 2005 before the Police (Ex. PW.2/DA);
- Statement dated 20th September, 2005 before the Police (Ex. PW.2/B);
- Statement dated 02nd June, 2005 before the Police (Ex. PW.2/A); and
- Statement dated 9th February, 2010 before the Trial Court.

17. Ld. APP submits that the Trial Court has held that PW-2, in all his statements, has made immense improvements and there are several contradictions. However, the common thread in all his statements is that he was fired upon and suffered three bullet injuries. PW-2 fell unconscious after the first two gunshots and consequently, did not know who had fired the third shot. According to PW-2, the first shot was fired by Mr. Virender Singh Rawat, the second shot was fired by Mr. Rajender Singh and he is not aware as to who had fired the third shot.

18. Further, Ld. APP submits that PW-14, who was the driver of PW-2 also gave evidence stating that he was an eye-witness to the incident. PW-14 in his statement states that he was having tea across the shop of the injured when the incident took place and he had seen both the assailants running away from the site. PW-14 is also stated to have seen the weapon *i.e., katta* having been dropped by the Respondents, who fled on a bike after firing the gunshots. Moreover, PW-14 claims to have taken his master to the hospital.

19. It is also the submission on behalf of the State that PW-7 was a salesman in the neighbourhood and he saw two persons coming out from the shop of the injured. PW-7 also claims to have seen PW-2 in an injured condition.

20. Finally, the submission of Mr. Bahri, Ld. APP, is that, in paragraphs 40



and 42 of the impugned judgment, the Trial Court has rejected the evidence on record and held that the substratum of the case has not been corroborated by the gunshot injuries, the past involvement or the allegations against the Respondents.

21. On the other hand, Mr. Sakesh Kumar, Id. Counsel appearing for the Respondents submits that the allegations against the Respondents were totally concocted and there was no evidence to implicate the Respondents. Id. Counsel further submits that the investigation was also not done in a proper manner with any independent persons being present at the time of the investigation.

22. Id. Counsel for the Respondent urges that the evidence recorded by the prosecution is only of interested persons *i.e.* the injured, his brother and his driver, who supported the case of the injured. Id. Counsel highlights that even the forensic evidence does not support the accusations and allegations against the Respondents. No public witness was examined, in such a busy area. Thus, it is submitted that the Trial Court has rightly acquitted the Respondents.

Analysis and Findings

23. The occurrence of the incident itself and the injured being shot at is not in dispute as the MLC clearly records that the injured had suffered injuries. In fact, Dr. Vivek Tandon, Senior Consultant, General Surgery, Metro Hospital who appeared as PW-3 confirms that the injured was brought to him on 12th January, 2005 and had suffered 3 injuries. Thus, the injuries which were suffered by the injured are proved on record.

24. PW-3 was able to sustain cross-examination as well. One relevant part of the cross-examination of PW-3 is that he admits that the injured was one of his old patients and that he had operated upon him on an earlier occasion.



PW-3 in his cross-examination further stated that he did not have any recollection about whether the name of the assailants were disclosed to him or not. The relevant portion of the cross-examination of PW-3 is set out below:-

“It is correct that R.K Gupta is my old patient as once 1 had operated upon R.K. Gupta. Voltd. prior to that operation I had never treated him. It is correct that after operation, he used to come me for a brief period. It is wrong to suggest that during this period R.K Gupta had developed friendship with me. It is correct that 1 have mentioned in my examination in chief that patient was conscious and oriented. It is correct that for determining whether a person is conscious or oriented there is a test i.e. asking the patient few simple questions. 1 have declared him conscious and oriented after putting him few questions. 1 cannot recollect whether the injured or any of the accompanying person disclosed the name of assailant to me.

Q. I put to you that it is stated in the MLC that the firing was done by some unknown person and thus I ask you as to who has stated this to you ?

Ans **This fact was not disclosed to me neither the same was disclosed in my presence.**

Voltd. the MLC has been prepared by Dr. Akhilesh and he can answer this query.

It is wrong to suggest that I never examined the injured or that that is the reason why I am unable to answer this question. **It is wrong to suggest that the injured had told me that some unknown person had fired upon him or that that is the reason why this has been recorded in the MLC.** It is correct that there is overwriting in date and time column of the MLC ex.PW3/A at encircled portion Y. 1 cannot say if the observations "as per accompanying people" figuring above the alleged history has been added subsequently....”

25. From the above testimony of PW-3, it is clear that the MLC was



prepared by one Dr. Akhilesh, Casualty Medical Officer at the Metro Hospital. PW-3 recognized Dr. Akhilesh's signatures in the MLC, however, Dr. Akhilesh was not produced by the prosecution. As per the MLC, it is relevant to note that the injured was accompanied by Shri Mukesh Gupta, brother of the injured i.e., PW-13 and Sunil i.e., PW-14. The MLC of the injured records the history of the incident as under:-

“As per accompanying people

*Alleged gunshot injury at about 8.10 pm at C-1217 New Kondli,
Delhi*

Fired by some unknown persons”

26. As per the MLC i.e., Ex. PW-3/A, the names of the Respondent are not named as the assailants. It appears that this recording in the MLC was based upon the information given by the persons who had accompanied the injured and not the injured himself.

27. For whatever reasons, an attempt was also made to get another MLC prepared from the Lal Bahadur Shastri Hospital, Delhi on 7th March 2005, wherein the names of the Respondents are mentioned. The relevant portion of the said MLC reads as under:

PARTICULARS OF INJURIES OR SYMPTOMS IN CASE OF POISONING
Alleged History on 12/1/05, at about 8 PM two person named Rajender Singh & Vinender Singh Rawat come to my office C-1/218 New Kondli and stated firing with fire arms without any provocation. Rajender Singh was holding country made fire arm & Vinender was holding country made revolver. and fired 3 shots one by Rajender and two by Vinender.

28. This MLC dated 7th March, 2005 being Ex. PW-4/A was signed by Dr.



Vinay Kumar Singh, Junior Specialist, Forensic Medicine, Lal Bahadur Shastri Hospital, Delhi. Dr. Vinay Kumar Singh was examined as PW-4. In this MLC, apart from the names of both the Respondents, the opinion is given that the injuries caused to PW-2 are '*Dangerous*'. The relevant portion of the MLC reads as under:

OPINION:- After examining the injuries, I opine that the injuries are *Dangerous* injuries and one caused by other party and the other are not self-inflicted or fabricated wound.

हस्ताक्षर : डॉ. विनय कुमार सिंह
Signature: Forensic Medicine Officer

29. Sufficient doubt is raised against the testimony of PW-4 as the MLC was prepared by PW-4 in March 2005 i.e. almost 2 months after the incident. Moreover, in the opinion of this Court, when the initial MLC was prepared in Metro Hospital, there was no need for a second MLC to have been obtained by the injured or the Investigating Officer.

30. Insofar as the testimony of PW-2 is concerned, apart from the initial statement under Section 161 of the Cr.P.C on 14th January 2005, two supplementary statements were also recorded namely on 2nd June 2005 and 20th September 2005. The final evidence was given by PW-2 in the Court on 9th February 2006. The first three statements of the injured are extracted below:-



Statement dated 14th January 2005

बयान अजाने Rakesh Gupta S/o Late दामोदर गुप्ता R/o 57A पॉकेट D SFS मयूर विहार फेस III
दिल्ली उम्र 42 साल

बयान किया कि मैं पता बाला पर सपरिवार रहता हूँ और प्रापर्टी डीलर का काम करता हूँ और C-1/218 न्यू कोण्डली में मेरा दफ्तर है। दिनांक 12-1-05 को मैं समय करीब 8 बजे रात मैं अपने दफ्तर उपरोक्त में अकेला कुर्सी पर बैठा TV देख रहा था तो अचानक एक लड़का विरेन्द्र सिंह रावत जो A-127 न्यू अशोक नगर दिल्ली में रहता है, आया जिसको मैं पहले से अच्छी तरह से जानता हूँ। आते ही मुझसे कहा तूने मेरे भाई को मारा है, आज तुझे जिन्दा नहीं छोड़ूंगा और मेरी तरफ रिवातवर तान कर गोली चला दी, जो मेरे दाहिनी हाथ पर कोहनी के पास लगी तथा उसी समय दूसरी गोली चला दी, जो मेरे बचाव करते हुये बांये बाजू की बांह में लगी, जैसे ही मैं अपना बचाव करते समय खड़ा हुआ तो उसी समय राजेन्द्र सिंह S/o Karan Singh जो न्यू अशोक नगर में DPA पब्लिक स्कूल के पास रहता है मेरे दफ्तर के अन्दर घुस कर गोली चला दी जो मेरी बाँयी आंख के नीचे की साईड में लगी, मैंने शोर मचाया तो ये दोनों मौका से भाग गये। उसके बाद मैं बेहोश हो गया जब होश आया तो अपने आपको मैट्रो हस्पताल नौएडा यू.पी. में पाया मैं दर्द से काफी परेशान था जो आज होश में हूँ। उपरोक्त दोनों आदमियों ने मेरे दफ्तर में घुसकर मेरे ऊपर गोली चलाकर जानलेवा हमला किया है। इनके खिलाफ कानूनी कार्यवाही की जावे। इन लोगो से मेरी पुरानी रंजिश चल रही है। आपने मेरा बयान लिखा बयान सुन पढ़ लिया ठीक है।



Statement dated 2nd June 2005

बयान अजाने श्री राकेश गुप्ता स/० दामोदर गुप्ता R/o Flat No 57A पाकेट D SFS फ्लैट मयूर विहार फेस III दिल्ली

U/s 161 CrPC

बयान किया कि मैं अपने पहले बयान की ताईद करता हूँ व माजिद बतला रहा हूँ कि मैं उपरोक्त पते पर रहता हूँ प्लॉट C 218 न्यू कोन्डली दिल्ली मे मेरा प्रोपर्टी डीलर का दफ्तर है। मेरे भाई योगेश व मुकेश जो नए अशोक नगर में रहते हैं व इनका कारोबार है व वहीं पर मेरा स्कूल है जिसमे मैं स्कूल बना रहा था वहीं पर पड़ोस के रहने वाले राजेन्द्र सिंह व उसका पिता करण सिंह शेकावत वली भी आ गया। सन् 1991 में उसके भाइयो के साथ राजेन्द्र सिंह व करण सिंह की कहासुनी हो गयी थी तथा दरखास्त मे मेरा नाम झूठा दिया गया, जो बाद मे फैसला हो गया था तब से मैं करण सिंह व उसके लड़के राजेन्द्र सिंह को अच्छी तरह से जान गया था। करण सिंह का काम झगडा करना व मोके का गवाह बन जाता था व बाद में पैसा लेकर फैसला व गवाही में बैठ जाता था। जो इसी तरह इन्होंने मेरा नाम बलबीर सिंह के मर्डर के मुकदमे नं० 42 dt 14-2-02 u/s 302 IPC PS न्यू अशोक नगर दिल्ली में मेरा नाम झूठा दिया था जब की मैं वहां वहां पर गया ही नहीं व मेरा नाम FIR में था तथा करण सिंह ने मेरा नाम इस मुकदमे में झूठा लगाकर मुझे गिरफ्तार कराया था तथा कोर्ट से case चलने पर मुझसे मुकदमे को रफादफा करने के लिये 12 लाख रुपये की इन लोगो ने मांग करी है जो 17 नवम्बर 2004 को करण सिंह ने अपने लड़के राजेन्द्र को वीरेंद्र सिंह के साथ पैसो की बात चीत व फैसले की बात चीत के लिये कोर्ट मे भेजा था जो मैंने उन्हें इतने रुपये देने से मना कर दिया था जो इस खुंदक में राजेन्द्र सिंह व विरेन्द्र सिंह ने मुझे 12-1-05 को मेरे दफ्तर में घुसकर जानलेवा हमला किया था जो विरेन्द्र सिंह ने कट्टे से मुझे गोली मारी व राजेन्द्र सिंह ने एक गोली मारी। जो आज तक भी मेरे चेहरे से नहीं निकली है जिससे मेरी सन 1991 से ही पुरानी रंजिस चल रही है। पुरानी रंजिस के कारण ही इन दोनों ने मुझे गोलिया मारी हैं। बयान सुन लिया ठीक है।



Statement dated 20th September 2005

बयान अजाने Shri R.K. Gupta S/o Sh. D.P. Arya R/o H No. 51 Pocket-D SFS Flats Mayur Vihar-III New Delhi

U/s 161 CrPC

बयान किया कि मैं पता उपरोक्त पर रहता हूँ तथा C-1/218 New Kondli में Property dealing का काम करता हूँ। दिनांक 12/1/05 को शाम के वक्त करीब 8-00 बजे मैं अपनी दुकान पर मौजूद था तभी विरेन्द्र रावत व राजेन्द्र सिंह जो कि A Block New Ashok Nagar Delhi में रहते हैं जिन्हें मैं पहले से जानता हूँ मेरे office में आये तथा विरेन्द्र रावत ने अपने रिवाल्वर से गोली चलानी शुरू कर दी, तथा एक गोली उसके साथ मौजूद राजेन्द्र ने भी देशी कट्टे से गोली चलायी जो मेरी आंख के नीचे लगी उसके बाद मैं बेहोश हो गया तथा बाद में मैंने अपने आपको Metro Hospital में Admit पाया। विरेन्द्र रावत ने अपने भाई के murder Case में भी मेरा झूठा नाम लिखवा दिया था तथा Compromise करने के लिए राजेन्द्र व विरेन्द्र रावत मुझ से पैसे की Demand करते थे जो कि मैंने नहीं दिये। इसी लिए उपरोक्त दोनों लोगो ने जिन्हें मैं अच्छी तरह से पहचानता हूँ मुझे office में आकर गोली मारी थी। बयान सुन लिया ठीक है।

31. In the testimony given before the Court on 9th February 2010, PW-2 firstly claimed that there were three shots fired at him. The first one by Virender Singh Rawat which hit his right arm near the elbow. The second shot was fired by Rajender Singh which hit PW-2 at the left arm near the shoulder. Insofar as the third shot is concerned, PW-2 claimed that he was not aware as to who fired the third shot. The said shot had hit the injured below the left eye i.e., above the cheek. Even in cross-examination, an attempt was made to bring out the contradictions in the testimony of PW- 2 by the Id. Counsel appearing for the Respondents.

32. The Trial Court, however, analysed all the four statements of the



injured and brought out various contradictions and improvements in the said statements.

33. This Court has also analysed all the four statements of PW-2. The following are the summaries of all the statements of PW-2 from which contradictions and improvements emerge:-

Statement dated 14th January, 2005

- As per the testimony of PW-2, on 12th January, 2005, at about 8:00 P.M., one Virender Singh Rawat, who was known to PW-2, entered his shop and stated, “*tune mere bhai ko mara hai, aaj tujhe zinda nahi chodunga*”. Thereafter, Virender Singh Rawat pointed a revolver at PW-2 and fired a shot, which struck PW-2 on his right elbow. He thereafter fired a second shot, which hit PW-2 near his left shoulder. When PW-2 stood up in an attempt to save himself, one Rajender Singh entered the shop and fired a third shot, which struck PW-2 below his left eye. PW-2, thereafter, became unconscious and regained consciousness only at Metro Hospital, Noida, U.P. PW-2 further stated that he was having prior enmity with the assailants.

Statement dated 2nd June 2005

- As per this statement of PW-2, he had enmity with Rajender Singh and his father namely, Karan Singh, since 1991, when an altercation had taken place between them, pursuant to which PW-2 was allegedly falsely implicated in a case. PW-2 further stated that Karan Singh would often initiate an altercation or fight, thereafter accuse the other person, and subsequently appear as a witness to depose against such person. PW-2 stated that, consequently, Karan Singh had falsely



implicated him in the murder of one Balbir Singh, *vide FIR No. 42/2003* dated 14th February, 2002, registered at P.S. New Ashok Nagar. According to PW-2, Karan Singh had offered to compromise the said FIR upon payment of Rs. 12 lakhs to him. In this regard, on 17th November, 2004, Rajender Singh and Virender Singh had met PW-2 in Court, however, PW-2 refused to make the payment. PW-2 further stated that, owing to the aforesaid enmity, on 12th January, 2005, Rajender Singh and Virender Singh entered his shop, whereafter Virender Singh fired a shot at him and Rajender Singh also fired a shot at him.

Statement dated 20th September 2005

- As per the testimony of PW-2, on 12th January, 2005, at about 8:00 P.M., Virender Rawat, who was known to PW-2, entered his shop, pointed a revolver at him, and fired a shot. PW-2 further deposed that Rajender Singh fired a shot at him from a country-made pistol, which struck him below his eye. PW-2, thereafter, became unconscious and regained consciousness only at Metro Hospital. PW-2 further stated that Virender Rawat had demanded money from him for compromising the case relating to the murder of his brother, which PW-2 had refused to pay.

Statement dated 9th February, 2010 before the Court

- As per the testimony of PW-2, on 12th January, 2005, at about 8:00 P.M., Virender Singh, accompanied by Rajender Singh, entered his shop and stated, “*tune mere bhai ko mara hain, aaj tujhe zinda nahi*



chodunga, jaan se maar dunga”. Thereafter, Virender Singh pointed a revolver at PW-2 and fired a shot, which struck him on his right arm near the elbow. Rajender Singh thereafter fired a second shot, which struck PW-2 near his left hand and shoulder. Subsequently, another shot was fired at PW-2, which struck him beneath his left eye. PW-2 stated that he was unable to identify the person who had fired the said shot. PW-2 further stated that he had been falsely implicated in the murder case relating to Balbir.

- During his cross-examination, PW-2 did not admit having stated to the police that the shot fired by Rajender Singh had struck him beneath his eye. PW-2 further deposed that Rajender Singh and Virender Singh had, on multiple occasions, demanded money from him for effecting a compromise in the murder case relating to Balbir. According to PW-2, Rajender Singh and Virender Singh had demanded Rs. 12 lakhs and Rs. 20 lakhs, respectively, from him. PW-2 further admitted that, apart from the murder case relating to Balbir, two other FIRs had also been registered against him.
- PW-2 further clarified that he did not have any enmity with the assailants and was not aggrieved by his implication in the murder case relating to Balbir. PW-2 also stated that Rajpal Singh, the brother-in-law of Virender Singh, had approached him for initiating talks for a compromise in the said murder case. PW-2 further stated that he had lodged complaints against Rajender Singh and Virender Singh.
- According to PW-2, on the date of the incident, the assailants were wearing monkey caps, although the same covered only their foreheads. During his cross-examination, PW-2 stated that Virender Singh had



made a demand for money from him on 17th November, 2004, in the premises of the High Court.

34. In view of the changing stand of the injured, the Trial Court held that the testimony lacks credibility.

35. Insofar as PW-7 is concerned, he was a salesman working in a neighbourhood shop who, upon hearing the sound of firing, claims to have seen two persons exiting from the shop of the injured. However, he was not an eye-witness to the incident, and the assailants are stated to have escaped on a motorcycle, with one of the *katta* allegedly falling from the hand of one of the assailants. Thereafter, PW-7, before the Court identified the Respondents as the assailants. PW-7 also claimed that he can identify the *katta* i.e., revolver.

36. However, in his cross-examination, PW-7 admits that he could not see anything from his office towards the shop of the injured. PW-7 claims to have been the first person to have reached the office of the injured. He had initially stated to the police that he had not seen the faces of the assailants fully but only partially, and had also stated that the assailants were wearing monkey caps though their faces were not covered. PW-7 agreed that he identified the Respondents for the first time during his examination-in-chief, while denying that the Respondents had been shown to him prior to his deposition before the Court. PW-7 further admitted that the Respondents were not arrested in his presence.

37. Insofar as PW-14 is concerned, he was the driver of the injured. According to him, the two assailants were wearing monkey caps and they fled on a motorcycle. He claimed that the pillion rider was aged about 35 to 40



years. A similar statement was made by PW-7 as well.

38. PW-14, in his testimony, stated that he had gone to a tea shop to get tea and upon returning, witnessed the two assailants. PW-14 further stated that the country-made pistol i.e., *katta* was found lying on the road and was, thereafter, seized by the police.

39. The witness from the FSL, Mr. Puneet Puri, Senior Scientific Officer (Ballistics), Rohini Delhi, who appeared as PW-17 initially deposed that he had received three cartridges from the laboratory maintained by the FSL which were test fired for comparing it with the bullet which was retrieved from the crime scene. According to him, when he fired the same, the pistol was found in working order. The test fired cartridge case was exhibited and the recovered test fired bullet was also exhibited. He deposed that the individual characteristics of the firing pin marks which were on the fired empty cartridge and the test fired cartridge case were identical. The relevant portion of the testimony of PW-17 is set out below:-

“On examination, I found that the countrymade pistol marked Ex. F-1 was in working order. Test fire was conducted successfully by using one 8 mm/.315 inch cartridge from laboratory stock. The test fired cartridge case was marked as TC-1 and the recovered test fired bullet was marked as TB-1.

The cartridge case marked as Ex. EC-1 was a fired empty cartridge and had been fired through the countrymade pistol marked Ex. F-1 as the individual characteristics of firing pin marks present on Ex. EC-1 and on test fired cartridge case marked TC-1 were found identical when examined under the comparison microscope. The bullet marked Ex. EB-1 was corresponding to the bullet of 8 mml.315 inch cartridge and had been discharged through the countrymade pistol marked Ex. F-1 as the individual characteristics



of striations present on Ex. EB-1 and on test fired bullet marked TB-1 were found identical when examined under the comparison microscope. The bullet marked Ex. EB-2 was corresponding to the bullet of .32 inch cartridge. The countrymade pistol marked Ex. F-1 was a fire arm, the cartridge case marked Ex. EC-1 and the bullets marked Ex. EB-1 and EB-2 were ammunition as defined in Arms Act 1959. The exhibits were resealed in the seal of PP FSL DELHI. My detailed report in this regard is EX.PW17/A bearing my signatures at point A on both sides of my report. My report is correct.”

40. In cross-examination, however, it was revealed by the PW-17 that the 3 live cartridges were, in fact, received from the Police Station New Ashok Nagar and not from the Ballistics Division of the FSL. In fact, PW-17 conceded that the three live cartridges may have been received from the police station, thereafter sent to the Ballistics Division, and subsequently received by him from the Laboratory Stock of the Ballistics Division.

41. The three live cartridges were received by one, Mrs. Prerana Lakra, Senior Scientific Assistant (Ballistics), FSL, Rohini, who was deposed as DW-1 by the defence. The relevant portion of the testimony of DW-1 reads as under:-

“1 have brought the summoned record i.e. the Receipt Register dated 06.06.2005 regarding receipt of three cartridges at FSL from PS New Ashok Nagar in case FIR No. 15/2005. Copy of the same is Ex, DW1/A. (OSR). The relevant entry is made at serial no. 8 (a) between serial no. 8 & 9 at point X on Ex. DW1/A. I have also brought the Cartridges Consume Register dated 23.11.2006 regarding issuance of one live cartridge to the expert for test fire. The copy of the same is Ex .DW1/B (OSR). The relevant entry, is at serial no. 39. The name of the PS is written above the white fluid correction at point X and white fluid correction is also



used at point Y on FIR number mentioned therein. The relevant entry is at point A.

I am not aware about the remaining two cartridges out of the three received in the lab on 06.06.2005.

I am posted in the Ballistics Division since 2004. The cartridges are always carrying identification mark of manufacturer.

1 have been shown Ex. PW19/1 which bears my signature at point A. I have also been shown the receipt already Ex. PW19/DX-4 which also bears my signature at point A.”

42. The register wherein the receipt of the 3 live cartridges was mentioned is set out below:-

6(a)	27.04.05	2005/F-2030	193/04	Mishra, Leendey	Two (02)
7.	31.05.05	2005/F-2036	78/05	Singh, Vihar	Three (03)
8.	06.06.05	2005/F-2084	446/03	Preet Vihar	Three (03)
8(a)	06.06.05	2005/F-2088	15/05	New Ashok Nagar	Three (03)
9.	15.06.05	2005/F-2122	151/05	New Ashok Nagar	Three (03)
			302/34 JFC K23/SK/59A4		

43. On the basis of this, the allegation was that there was an interpolation in the register and serial number '8(a)' was actually inserted later.

44. PW-8: Chiddi Khan also claimed to be an eye-witness who was present at the site when the incident in the present case occurred. PW-8 was running an office in the name of Janta Properties when the incident occurred and claims to have seen two persons, who had arrived on a motorcycle, fleeing towards Kondli village. He claimed that he was later informed that firing was done on PW-2. In fact, his statement was contrary to his statement under Section 161 of the Cr.P.C and he had actually turned hostile. In his statement



before the Id. Court Magistrate under Section 164 of the Cr.P.C, PW-8 stated as under:-

“I have been running an office in the name of Janta Properties since 1993 at the given address and I have been dealing in Timber. On 12.01.2005 at about 8 pm I was standing in front of Bharti Public School at Mangal Bajar Chowk, New Kondli. I saw that two persons came on a motorcycle and were running towards Kondli village. Some public persons were raising alarm at the chowk. I reached the chowk near R.K. Properties office and there I came to know that some persons had fired upon R.K. Gupta and injured him and ran away from the motorcycle. Two police officers were also present at the spot and they asked about the offenders from me. I told them about the two persons who had run away towards Kondli village on the motorcycle. I had seen Rakesh Kumar Gupta in injured condition and blood was oozing out from his left hand and he was being taken to some hospital by his driver in the vehicle. I also saw a countrymade pistol/deshi katta was lying on the spot. I informed to the police after taking a mobile phone from a public person there and the police had reached the spot. I could not see the faces of the offenders running on the motorcycle due to evening time and darkness. Lateron I came to know that police had arrested two persons in this case resident of New Ashok Nagar. I could not noted down the number of the motorcycle.

At this stage, Id. Addl. PP wants to cross examine this witness as he is resiling from his previous statement”

45. A perusal of the testimony of PW-2, the injured himself, given before the Court in comparison with his earlier statements under Section 161 of the Cr.P.C reveals that there are several improvements and contradictions which have already been captured in paragraph 33 of this judgment.

46. Insofar as the eye-witnesses are concerned, none of them appeared to



have actually seen the assailants though they tried to cover up this fact during their testimonies before the Court

47. Doubts have been raised by the eye-witnesses who claimed that the assailants were wearing monkey caps, therefore, it is unclear whether the assailants were even visible to the eye-witnesses or not as it was night time and the incident occurred around 8.00 P.M. Thus, it appears that the Trial Court's finding that none of the testimonies of the eye-witnesses can in fact be believed, would be correct.

48. The discrepancies in the FSL reports and the manner in which the register of the FSL appears to be having an insertion of the receipt of three live cartridges raises enormous doubts as to the credibility of the FSL report as well. Moreover, the incident took place in a busy commercial area and there ought to have been some independent eye-witnesses. However, the evidence of no such eye-witnesses has been led by the prosecution.

49. In the opinion of this Court, the prosecution has failed to establish the guilt of the Respondents beyond reasonable doubt.

50. In this case, though, the charges were framed under Section 307 of the IPC, owing to the connected case being **FIR No. 42/2003** registered at PS. New Ashok Nagar which involved the demise of Shri. Balbir Singh *i.e.*, brother of Virender Singh Rawat, the case was sent to the Sessions Court. The possibility of false implication of the Respondents, therefore, cannot be ruled out.

51. It is a well-settled principle in law that the Appellate Court is not to substitute its judgment, especially, in the case of an acquittal. When there is an acquittal, the Appellate Court should be reluctant in interfering with the same unless there is perversity in the judgment of the Trial Court. The



Supreme Court in the decision in *Mohan v. State of Karnataka*, (2022) 12 SCC 619 while discussing the powers that can be exercised by the Appellate Court against an order of acquittal held as under:

“20. Section 378CrPC enables the State to prefer an appeal against an order of acquittal. Section 384CrPC speaks of the powers that can be exercised by the appellate court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the appellate court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The appellate court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty-bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the appellate court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role to undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An appellate court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.



22. At times, courts do have their constraints. We find different decisions being made by different courts, namely, the trial court on the one hand and the appellate courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The appellate court is expected to maintain a degree of caution before making any remark.

23. This Court, time and again has laid down the law on the scope of inquiry by an appellate court while dealing with an appeal against acquittal under Section 378CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this Court in *Anwar Ali v. State of H.P.* [*Anwar Ali v. State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] : (SCC pp. 182-85, para 14)

“14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : (*Babu case* [*Babu v. State of Kerala*, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , SCC p. 199)

‘20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic



as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn.* [*Rajinder Kumar Kindra v. Delhi Admn.*, (1984) 4 SCC 635 : 1985 SCC (L&S) 131] , *H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [*H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*, 1992 Supp (2) SCC 312] , *Triveni Rubber & Plastics v. CCE* [*Triveni Rubber & Plastics v. CCE*, 1994 Supp (3) SCC 665] , *Gaya Din v. Hanuman Prasad* [*Gaya Din v. Hanuman Prasad*, (2001) 1 SCC 501] , *Arulvelu* [*Arulvelu v. State*, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and *Gamini Bala Koteswara Rao v. State of A.P.* [*Gamini Bala Koteswara Rao v. State of A.P.*, (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])’

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [*Kuldeep Singh v. Commr. of Police*, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence 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, the conclusions would not be treated as perverse and the findings would not be interfered with.

14.3. In the recent decision of *Vijay Mohan Singh* [*Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] , this Court again had an occasion to consider the scope of



Section 378CrPC and the interference by the High Court (State of Karnataka v. Vijay Mohan Singh [State of Karnataka v. Vijay Mohan Singh, 2013 SCC OnLine Kar 10732]) in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under : (Vijay Mohan Singh [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] , SCC pp. 447-49)

‘31. An identical question came to be considered before this Court in Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] . In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under : (SCC p. 233)

“10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.”



31.1. In *Sambasivan* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under : (SCC p. 416)

“8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in *Doshi* case [*Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify



setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.”

31.2. In *K. Ramakrishnan Unnithan* [*K. Ramakrishnan Unnithan v. State of Kerala*, (1999) 3 SCC 309 : 1999 SCC (Cri) 410] , after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned



Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807] , in para 5, this Court observed and held as under : (AIR pp. 809-10)

“5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417CrPC 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. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State* [*Surajpal Singh v. State*, 1951 SCC 1207] ; *Wilayat Khan v. State of U.P.* [*Wilayat Khan v. State of U.P.*, 1951 SCC 898]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.”

31.4. In *K. Gopal Reddy* [*K. Gopal Reddy v. State of A.P.*, (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.””



52. The Supreme Court in the decision in *Bhupatbhai Bachubhai Chavda v. State of Gujarat*, 2024 SCC OnLine SC 523 observed as under:

“6. It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.”

53. Moreover, the Supreme Court in the decision in *Jafarudheen v. State of Kerala*, (2022) 8 SCC 440 observed as under:

“Scope of appeal filed against the acquittal

25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened



but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

54. In the decision in ***State of Goa v. Sanjay Thakran***, (2007) 3 SCC 755, the Supreme Court has also observed as under:

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterised as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappraise the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.”

55. From the above decisions it is clear that the Appellate Court may re-appreciate the evidence in an appeal against acquittal, however, interference is warranted only where the view taken by the Trial Court is not a plausible view on the evidence on record or where the finding of guilt is the only possible conclusion. A mere possibility of another view does not justify interference and an order of acquittal can be overturned only if the finding of acquittal is perverse.



56. Under such circumstances, the Trial Court having acquitted the Respondents, which is a possible opinion on the facts and evidence in the present case, this Court is not inclined to reverse the same.

57. Accordingly, the present appeal is dismissed. Pending applications, if any, are also disposed of.

58. Personal/Bail bond and surety of the Respondents are discharged.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

SEPTEMBER 17, 2026/MR/ck