Mohan @Srinivas@ Seena @Tailor Seena vs The State Of Karnataka on 13 December, 2021

Author: M.M. Sundresh

Bench: M.M. Sundresh, Sanjay Kishan Kaul

REP

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1420 OF 2014

MOHAN @SRINIVAS
@ SEENA @TAILOR SEENA …APPEL

VERSUS

THE STATE OF KARNATAKA …RESPONDE

WITH

CRIMINAL APPEAL NO. 759 OF 2018

JUDGMENT

M.M. SUNDRESH, J.

1. A well merited judgment of the Court of Sessions acquitting two young men accused of murdering a police officer, was overturned by the High Court convicting them for life. Seeking to set themselves at liberty, these appeals are before us.

2. We have heard learned counsel appearing for the parties, perused documents and the written arguments filled. Incidentally we called for the trial court records and went through them.

FACTS:

3. PW-4 and PW-5 are brothers. The deceased was the maternal uncle of the aforesaid two witnesses. They attacked the mother of A-1 leading to a complaint given to PW-1, Sub-Inspector of Police.

4. Not satisfied with the registration of the first information report qua the offence at the hands of PW-1, a complaint was given before the Lokayukta by A-1. Incidentally, PW-1 was suspended. He was facing other charges as well. It was in vogue even at the time of giving evidence.

5. On the aforesaid motive, both the accused carried three weapons, waylaid the deceased at a signal in a main road at about 5 p.m. and after the initial attack, dragged him to the pavement, and thereafter inflicted multiple injuries. Both the accused and the deceased were travelling in two-wheelers. PW-1, who was working in a police station, a bit far away, was coming from his house after taking lunch. He was a chance witness. He saw the occurrence from a fair distance. He was known to the deceased. The deceased had his intestine coming out. The deceased told him the story implicating the accused. Preceding PW-1, PW-2 was present at the scene. He was also a police head constable. Both PW-1 and PW-2 are working in the traffic department. He heard the statement made by the deceased, as one of the accused threw a weapon at PW-2, which recovery was shown subsequently at a different open place, as is the case of the other recoveries. PW-1, thereafter, chased the accused but could not secure them. The statements made by PW-1 and PW-2 differ with respect to the street.

6. PW-1 and PW-2 stopped an auto and placed the deceased into it along with one Ramesh, since deceased (not examined). Incidentally, he is not only known to PW-1 but also a friend of the deceased and thus, yet another chance witness.

7. PW-1, thereafter, went to the police station and gave an oral complaint which was admittedly not registered. Thereafter, PW-1 came to the hospital which was about two kilometres from the place of occurrence, while another nursing home was in existence at about 50 meters. The hospital in which the deceased was admitted was run by PW-25, a doctor very well known to PW-1.

8. PW-25 gave treatment to the deceased at about 5.05 p.m. He died of multiple injuries caused by haemorrhage at about 5.45 p.m. The case sheet indicates that the deceased was allegedly attacked by two known persons, namely the accused. About 40 days thereafter – i.e., 03.12.2001, at the request of the police, PW-25 gave another certificate introducing adequate material to indicate that there was a dying declaration.

9. In the meanwhile, PW-1 went to the police station for the second time and gave a complaint which was registered by PW-28 at about 6 p.m. PW-28 is the investigating officer, who did his part by completing it and filed the final report with the major offences being Section 302, Section 506-B, and Section 120B r/w Section 34 of Indian Penal Code.

10.Before the trial court, the prosecution examined as many as 28 witnesses and marked Exhibit P-1 to P-60. Material objects are marked as MO-1 to MO-17. On behalf of the defence, a doctor was examined to show that considering the nature of the injuries suffered, the death must have been instantaneous. Certain portions of Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') statements given by the prosecution witnesses have been marked to contradict their deposition before the Court.

11.The Court of Sessions without exception, threadbare considered all the materials including the witnesses who turned hostile. Most of the witnesses pertaining to conspiracy, occurrence, recovery and extraordinary judicial confession turned hostile. After due scrutiny, benefit of doubt was extended in favour of the appellants.

12.The State took the case on appeal before the High Court. The High Court did not consider the entire evidence as discussed by the trial court. Nonetheless, it reversed the order of acquittal on the following grounds:

> The Trial Court had no idea of the concept of dying declaration and the principle governing it.
>
> The testimony of PWs 3, 4 and 5 ought to be read in unison and in conjunction with each other to come to an inference of motive.
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> The testimony of PWs 1, 2 and 25 ought to have been accepted.
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> The contradictions between the testimony of PW-2 and the statement under Section 161 CrPC, would only mean that the investigating officer was leaning towards the accused.
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> The medical evidence along with the documents marked clearly point out the guilt towards the accused.
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> The fact that the witnesses turned hostile including the panch witness who signed the recovery memos would not be fatal to the case of the prosecution.

13.Accordingly, the judgment of the trial court was reversed and conviction was rendered sentencing the appellants for life.

SUBMISSIONS OF THE APPELLANTS:

14.The learned counsel appearing for the appellants submitted that it is not probable that PW-1 could have been present on that day as a chance witness. He was having a grudge against the accused. At their instance he was facing departmental proceedings. The trial court has considered the evidence thoroughly. It found that PW-1 could not have been a chance witness and there are many discrepancies in his evidence and the testimony of PW-2. He did not use his wireless radio nor make any attempt immediately to give a complaint. He did not accompany the deceased, as reiterated by PW-2 being contradictory to that of Ex. P-41 read with the evidence of PW-25. It is inexplicable that the deceased would be taken to the hospital 2 kilometres away, while leaving the one on the road just about 50 meters away, especially taking note of the serious condition of the deceased. It is further submitted that PW-2's evidence was rightly disbelieved by the trial court in view of the contradictions in the evidence adduced by him and PW-1, and also PW-16. He also did not give a complaint despite being a police officer. The trial court rightly noted that it would be

unsafe to rely upon the evidence of PW-1 and PW-2.

15.The recovery shown also belies the case as put up by PW-2 with respect to an attempt to attack him by throwing one of the material objects at him. There was an admitted contradiction between the statement given by PW-2 before the Court and in his Section 161 CrPC statement as acknowledged by PW-28. The High Court straightaway came to the conclusion that PW-28 was supporting the accused, as all of them are the police officers known to each other. Even the occurrence has been spoken differently by PW-1 and PW-2.

16.The High Court ought not have made reliance upon Ex. P38 - P41. Ex. P-38 is highly doubtful, however, the same has been improved by Ex. P-41 by introducing the concept of dying declaration after about 40 days, which document came into existence on the insistence of the police which could be proved through the evidence of PW-25 himself.

17.Thus, when the trial court which had the advantage of seeing the witnesses in person during their deposition gave its verdict, it could not have been set aside through a cryptic order by the High Court without adequate discussion. The High Court ought not to have reversed the decision on the basis of a so-called dying declaration.

18.The counsel seeks support for his argument by placing reliance upon the following decisions:

> Jayamma & Anr. vs. State of Karnataka (2021) 6 SCC 213 Paparambaka Rosamma & Ors. vs State of A.P. (1999) 7 SCC 695 Surinder Kumar vs. State of Haryana (2011) 10 SCC 173 Chandrappa vs. State of Karnataka (2007) 4 SCC 415 Rajendra Prasad vs. State of Bihar (1977) 2 SCC 205 Padmanabhan Vijaykumar vs. State of Kerela (1994) Supp. 2 SCC 156 Amar Singh vs. State of NCT of Delhi (2020) SCC Online SC 826 Narayana Reddy alias Babu vs. State of Karnataka (2016) 14 SCC 212 A Shanker vs. State of Karnataka (2011) 6 SCC 279 Selvaraj vs. State of Tamil Nadu (1976) 4 SCC 343 Pradeep Narayan Madgaonkar vs. State of Maharashtra (1995) 4 SCC SUBMISSION OF THE STATE:

19.The learned counsel appearing for the State submitted that the High Court has correctly relied upon the evidence of PWs 1, 2 and 25. PW-25 is an independent witness. Merely because PW-1 and PW-2 are the police officers, their evidence cannot be disbelieved. The High Court also took into consideration the documents marked on the side of the prosecution. As relevant materials were indeed taken into consideration, there is no need for interference particularly when we are dealing with a case of homicide of a police officer. DISCUSSION:

20.Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC 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 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, 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 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali and Anr. v. State of Himanchal Pradesh, (2020) 10 SCC 166:

> 14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 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]) "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] , Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [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] , Aruvelu [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 378 CrPC and the interference by the High Court [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:

> "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:

> '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:

> '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 reappreciate 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: 1955 Cri LJ 1653], in para 5, this Court observed and held as under:

‘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 417 CrPC 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: AIR 1952 SC 52]; Wilayat Khan v. State of U.P. [Wilayat Khan v. State of U.P., 1951 SCC 898: AIR 1953 SC 122]) 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.” ON MERIT:

24.The trial court considered the testimonies of the other witnesses first before embarking upon eye witnesses and the material witness. It gives exhaustive reasoning for its ultimate conclusion. We have already recorded the fact that most of the witnesses turned hostile. PW-16, an independent witness also states that she has not seen the occurrence and she heard that the deceased was dead before taking to the hospital. The trial court took enormous pains in considering the evidence of all the witnesses one by one.

25.On considering the evidence of PW-7, a shoe shop owner, it gives its cogent reasoning for its non-acceptance. The previous bill and the relevant bill had a difference of about 8 months in between and this witness has not seen who has purchased the chappals marked as M.O. 8 from his shop. Similarly, PW-20 who was running an STD booth could not convince the trial court as he could not say that the accused had made calls from his booth. On motive, it was correctly analysed that there was nothing to implicate the accused with motive to murder the deceased.

26.PW-1 was the sterling witness of the prosecution. Certainly, he had an axe to grind against the accused who had given a complaint against him. He was facing a departmental enquiry and suspension. It is too strange that he could be a chance witness. His evidence was thoroughly analysed by the trial court including the distance between his place of work and his residence. He did not use his wireless which was not in operation and went to the police station to give an oral complaint the first time but the same was not registered. PW-25 was known to him and it is surprising as to why no attempt was made to save the deceased immediately by taking him to the nursing home which was 50 meters away as a normal human conduct. There are many contradictions between the statements made by PW-1 and PW-2. We are also surprised as to how the other chance witness Ramesh came to the place, once again, a person known to the family of the deceased. Though PW-1 denied the complaint against him, he made an admission that he was under suspension. There was no bloodstain of the deceased on PW-1 as against PW-2 and the same was also not matched. We are only noting the above just by way of an illustration. The trial court went way beyond what we have recorded while disbelieving the evidence of PW-1.

27.PW-2 was also seen along with PW-1. He was another eye witness. He was a duty constable. The trial court rightly doubted his presence as well. Once again, even this witness has not given any complaint. We are dealing with the deposition of a police officer who is expected to know his duty. While PW-2 did not make a complaint but went on to do his duty, PW-1 did not attend to his duty thereafter or informed the police station in which he was posted. Though, PW-2 has stated that accused made an attempt to attack him by throwing one of the material objects, even the High Court has disbelieved that. The said material object was recovered from some other place as could be seen from the recovery memo, despite the fact that it was nobody's case that the accused retrieved the same and kept it with them while being chased.

28.PW-25 is the doctor who is well known to PW-1. While PW-1 deposed that he did not actually accompany the deceased, PW-25 did make a statement that both the police and public admitted the deceased. This witness did admit that exhibit Ex. P-41 made a mention that the deceased was brought by PW-1 and Ramesh. We may note, both PW-1 and PW-2 did not speak about this. He had also stated that he did not know whether the contents of Ex. P-41 as correct or not. He acknowledged the fact that he was well known to PW-1 and his family.

29.On a reading of the evidence of PW-25 we do not find any existence of dying declaration in it. He had deposed that he did not remember whether the deceased told him that the accused attacked him and caused injuries. It is his further testimony that he had given Ex. P-41 due to the persistence of the police. He did not remember whether police asked him to name the accused under Ex. P-41.

30.We have also perused Exhibit P-38, the case sheet maintained by PW-25.

Exhibit P-38 though makes a mention about the accused, it did not speak about any statement being made by the deceased about the accused. It is interesting to note that PW-25 had stated that he did not record the statement of the deceased and that there were many policemen and general public at the relevant point of time, which is again a statement contrary to the case put up by the prosecution. Thus, we are in agreement with the reasoning of the trial court for not accepting the evidence of PW-25.

31.The defence also examined one witness. This witness is a Government doctor being an expert in the field of surgery. He had clearly deposed that it would be impossible for the deceased to be conscious after suffering injuries as mentioned in Exhibit P-38, which is intestines coming out. The trial court correctly considered this evidence.

32.Now we may come to the reasoning of the High Court. We feel it is unnecessary on the part of the High Court to make such strong comments on the judgment written by the trial court. When the evidence of PWs 1, 2 and 25 were not accepted by the trial court, there cannot be a dying declaration in existence. The dying declaration was put forth by the prosecution through the mouth of said three witnesses. As we find, that the evidence let in by them was found to not be trustworthy, there cannot be any dying declaration either in fact or in law. The High Court also did not consider the basis upon which the evidence of PWs 1, 2 and 25 could be accepted and as to how the various reasons given by the trial court are not acceptable especially when it did not consider the evidence of the other witnesses. It rendered a conviction on mere surmise, even though an inference can never be the basis of a conviction when the testimony of a witness is not believed on cogent reasoning. We do not know as to how the High Court could give a finding that the investigating officer was supporting the accused qua the contradiction elicited between Section 161 CrPC statement given by the witness as against deposition before the Court. We may note that the alleged occurrence was said to have happened at about 5 p.m. on a busy road with heavy traffic and even the evidence of PW-1 and PW-2 suggests that there were about 1000 persons. Except the evidence of PW-1 and PW-2, there was no other evidence relied upon by the prosecution.

33.In the conspectus of above, we are inclined to hold that the High Court did not undertake the exercise as mandated under Section 378 read with Section 384 CrPC in reversing the reasoned decision rendered by the trial court. Thus, the appeals are accordingly allowed. Consequently, the orders of conviction passed by the High Court stand set aside.

.....J. (SANJAY KISHAN KAUL) .....J. (M.M. SUNDRESH) New Delhi, December 13, 2021