Geeta Devi vs State Of U.P. on 18 January, 2022

Author: M. R. Shah

Bench: B. V. Nagarathna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.78 OF 2022

Geeta Devi ..Appellant(S)

Versus

State of U.P. & Ors. ..Respondent(S)

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.12.2019 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Appeal No. 2356 of 2019 by which the High Court has dismissed the said appeal preferred by the victim of the offence, which was filed against the judgment and order dated 13.09.2019 passed by the learned Special Court, acquitting the respondent accused under Sections 354, 504, 506 of the IPC, Section 3(1)(x) and 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the victim – original appellant has preferred the present appeal.

2. That the learned Special Court/Trial Court convicted respondent Nos.2 to 4 – accused for the offences punishable under Sections 452, 323/34 and 325/34 of the Indian Penal Code, however, acquitted them for the offences punishable under Sections 354, 504, 506 of the IPC, Section 3(1)(x) and 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Special Court acquitting the respondents – accused for the aforesaid offences, the victim preferred an appeal before the High Court by way of Criminal Appeal No.2356 of 2019 and by the impugned one page/paragraph judgment and order, the High Court has dismissed the said appeal, which is the subject matter of the present appeal before this Court.

3. We have heard Shri T.V. George, learned counsel appearing on behalf of the appellant, Shri Adarsh Upadhyay, learned counsel appearing on behalf of the State – Respondent No.1 and Shri Shahid Anwar, learned counsel appearing on behalf of respondent Nos.2 to 4 – accused.

4. Number of submissions have been made by the learned counsel appearing on behalf of the respective parties.

However, for the reasons stated hereinbelow we propose to remand the matter to the High Court and hence we refrain from dealing with any of the submissions made by the learned counsel appearing on behalf of the respective parties on merits as any observation made by this Court may affect either the prosecution or the defence.

5. We have gone through the judgment and order passed by the High Court dismissing the appeal preferred by the victim – appellant. As already noted, the impugned judgment and order passed by the High Court as such is one page/paragraph order. After observing in paragraph 3 that "I have gone through the judgment of the learned Trial Court carefully" thereafter without further elaborate re□appreciation of the entire evidence on record the High Court has dismissed the appeal by observing in paragraph 4 as under: □"4. Trial Court has considered the statement of P.W.□2 carefully and has found that the testimony of P.W.□2 cannot be relied on for offence under Sections 354, 504, 506 IPC, 3(1)(x) and 3(1)(xi) S.C./S.T. Act. There is no corroboration to the testimony of P.W.□2 when the trial Court itself has found the testimony of P.W.2 doubtful. There is no ground to interfere with the well considered judgment of trial Court and, therefore, I find this appeal without merit and substance. The appeal is thus, dismissed."

6. We are constrained to observe that this is not the manner in which the High Court should have dealt with the appeal against an order of acquittal which as such is a first appeal against the order of acquittal. The High Court has only made general observations on the deposition of the witness examined. However, there is no re□appreciation of the entire evidence in detail which exercise ought to have been made by the High Court while dealing with the judgment and order of acquittal. The High Court ought to have re□appreciated the entire evidence on record as it was dealing with a first appeal. Being the first appellate court, the High Court was required to re□appreciate the entire evidence on record and also the reasoning given by the learned Trial Court. How to deal with and decide an appeal in the case of an acquittal passed by the learned Trial Court is dealt with in the case of Umedbhai Jadavbhai Vs. The State of Gujarat (1978) 1 SCC 228. It was observed therein and held by this Court that once the appeal is entertained against the order of acquittal, the High Court is entitled to re□appreciate 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 a proper appreciation of the evidence.

Against an order of acquittal passed by the Trial Court the High Court would be justified on re□ appreciation of the entire evidence independently and come to its own conclusion that acquittal is perverse and manifestly erroneous.

6.1 How to deal with, decide and dispose of the criminal appeal against an acquittal under Section 378 Cr.PC has been elaborately dealt with by this Court and after considering the earlier catena of decisions of this Court in the case of Guru Dutt Pathak Vs. State of Uttar Pradesh, (2021) 6 SCC 116, in paragraphs 15 to 20 it has been observed as under: □

15. In Babu v. State of Kerala [Babu v. State of Kerala, (2010) 9 SCC 189, this Court has reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196□199) "12. This Court time and again has laid down

the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject□matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. [Balak Ram v. State of U.P., (1975) 3 SCC 219], Shambhoo Missir v. State of Bihar [Shambhoo Missir v. State of Bihar, (1990) 4 SCC 17] , Shailendra Pratap v. State of U.P. [Shailendra Pratap v. State of U.P., (2003) 1 SCC 761], Narendra Singh v. State of M.P. [Narendra Singh v. State of M.P., (2004) 10 SCC 699], Budh Singh v. State of U.P. [Budh Singh v. State of U.P., (2006) 9 SCC 731], State of U.P. v. Ram Veer Singh [State of U.P. v. Ram Veer Singh, (2007) 13 SCC 102], S. Rama Krishna v. S. Rami Reddy [S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535], Arulvelu v. State [Arulvelu v. State, (2009) 10 SCC 206], Perla Somasekhara Reddy v. State of A.P. [Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98] and Ram Singh v. State of H.P. [Ram Singh v. State of H.P., (2010) 2 SCC

445)

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42], the Privy Council observed as under: (SCC OnLine PC) '... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225] , Balbir Singh v. State of Punjab [Balbir Singh v. State of Punjab, AIR 1957 SC 216 :

> 1957 Cri LJ 481] , M.G. Agarwal v. State of Maharashtra [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Khedu Mohton v. State of Bihar [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 :
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> 1970 SCC (Cri) 479] , Sambasivan v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh v. State of M.P. [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] and State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415] , this Court reiterated the legal position as under : (SCC p. 432, para 42) '42. ... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law. (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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

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

16. In Ghurey Lal v. State of U.P. [Ghurey Lal v. State of U.P., (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh [State of Rajasthan v. Naresh, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] , the Court again examined the earlier judgments of this Court and laid down that : (SCC p. 374, para 20) '20. ... An order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne [State of U.P. v. Banne, (2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] , this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (Banne case [State of U.P. v. Banne, (2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] , SCC p. 286, para 28) '28. ... (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

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

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

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

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

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.' A similar view has been reiterated by this Court in Dhanapal v. State [Dhanapal v. State, (2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336] .

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference

16. When the findings of fact recorded by a court can 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 :
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> (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] , 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] , Arulvelu v. State [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 :
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> 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.

17. In the decision of this Court in Vijay Mohan Singh v. State of Karnataka [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 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 case, 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.
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> 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 v. State of Kerala [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 Ramesh Babulal Doshi v. State of Gujarat [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 v. State of Kerala [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 v. State of U.P. [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , 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 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.
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> 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 has 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 v. State of A.P. [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."

18. In Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] , in para 10, it is observed and held 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."

19. In Atley v. State of U.P. [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , this Court has observed and held as under : (AIR pp. 809□10, para 5) "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 has 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."

20. In K. Gopal Reddy v. State of A.P. [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."

7. Applying the law laid down by this Court in the aforesaid decisions of this Court to the facts of the case on hand and while considering the impugned judgment and order passed by the High Court, we find the same is unsustainable. On perusal of the impugned judgment and order passed by the High Court, we find that decision of the High Court is totally erroneous as it has ignored the settled legal position. As observed hereinabove, the High Court has not at all discussed and/or re-appreciated the entire evidence on record. In fact, the High Court has only made the general observations on the deposition of the witnesses examined.

However, there is no re-appreciation of entire evidence on record in detail, which ought to have been done by the High Court, being a first appellate court. Under the circumstances on the aforesaid ground alone, impugned judgment and order passed by the High Court deserves to be quashed and set aside and the same is to be remanded back to the High Court to decide the appeal afresh in accordance with law and on its own merits being mindful of the observations made hereinabove.

8. In view of the above and for the reasons stated above and without expressing anything on the merits of the case, the present appeal is allowed. The impugned judgment and order passed by the High Court in Criminal Appeal No.2356 of 2019 is hereby quashed and set aside. The appeal before the High Court is ordered to be restored to its original file.

The High Court to decide and dispose of the appeal in accordance with law and on its own merits, bearing in mind the observations made hereinabove. The High Court is requested to decide and

dispose of the appeal on merits at the earliest.

.....J. (M. R. SHAH) .....J. (B. V. NAGARATHNA) New Delhi, January, 18th 2022