Ghurey Lal vs State Of U.P on 30 July, 2008

Author: Dalveer Bhandari

Bench: Dalveer Bhandari, R. V. Raveendran

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.155 OF 2006

Ghurey Lal ... Appellant

Versus

State of U.P. ... Respondent

JUDGMENT

Dalveer Bhandari, J.

1. This appeal is directed against the judgment of the High Court of Allahabad dated 11th November, 2005 passed in Criminal Appeal No. 365 of 1981.

2. This is a murder case in which the trial court acquitted the accused. The High Court reversed the trial court's decision, finding the accused guilty. In doing so, the appellate court failed to give proper weight to the views of the trial court as to credibility of witnesses, thereby ignoring the standards by which the appellate courts consider appeals against acquittals.

3. We have endeavoured to set out the guidelines for the appellate courts in dealing with appeals against acquittal. An overriding theme emanates from the law on appeals against acquittals. The appellate court is given wide powers to review the evidence to come to its own conclusions. But this power must be exercised with great care and caution. In order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of innocence is further strengthened by the acquittal. The appellate court should, therefore, reverse an acquittal only when it has "very substantial and compelling reasons."

4. In giving our reasons for reversing the appellate court's judgment and restoring that of the trial court, we provide a brief review of the facts, the reasoning of the trial and High Court as well as the standards by which appeals against acquittals are reviewed according to settled principles of

criminal jurisprudence in our country.

5. Before turning to the facts that were before the trial court, we note that there is an interesting coincidence in this case. The names of both the accused and the deceased are Ghurey Lal. Therefore, to avoid confusion, we have referred to them as "accused" and "deceased."

6. Brief facts, according to prosecution, which are necessary to dispose of this appeal are recapitulated as under:-

> It appears that at the heart of this matter lies a property dispute. The accused testified in favour of his great-grand daughter, Ram Devi. This testimony went against the deceased, creating enmity between the parties.

7. On 14.3.1979, the deceased, Shiv Charan P.W.1, Brij Raj Singh P.W.2, Yad Ram P.W.4, Nathi Lal (not examined) and Bishambhar (not examined) had taken the customary Gur (Jaggery) during the Holi festival.

8. On their way home, they happened to pass by the home of the accused. The accused was standing just outside his home and was holding a shot gun. The accused began to verbally abuse the deceased. Thereafter, the accused fired one single shot from his gun, killing the deceased with a bullet and causing injuries to Brij Raj Singh P.W. 2 with pellets. Hearing the gun shot, some people quickly assembled at the scene. The accused fled to his room, which he locked from inside. The uncle of the deceased, Shiv Charan, lodged the FIR that very evening, the 14th March, 1979 at 6.15 p.m., at the Barhan Police Station in the District of Agra.

9. The accused provided his own version of the event. According to the statement of the accused under section 313 of the Code of Criminal Procedure, he went to the place of Kanchan Singh where Gur (Jaggery) was being distributed. One Bal Mukand told the accused to leave the Gur distribution ceremony, as the deceased, Brij Raj Singh P.W. 2, Yad Ram P.W.4, Nathi Lal and Bishambhar had collected pharsa, lathis and kattas declaring that they will deal with him (accused) when he comes there. On hearing this, the accused returned to his home and grabbed his gun. The deceased and others then arrived at his home, brandishing weapons. The deceased carried a pharsa, Nathi Lal had a katta, Brij Raj Singh a knife and Yad Ram and Bishambhar possessed lathis. To threaten and check them, the accused aimed his gun at them. This was to no avail. The deceased and others struck at the accused, hitting his gun. Nathi Lal fired his katta, causing pellet injuries to Brij Raj Singh P.W.2. A scuffle ensued in which the deceased's group tried to snatch away his gun. In the scuffle, the gun was accidentally fired, killing the deceased. The accused sustained pharsa and lathi blows on the butt and barrel of the gun. Fearing for his life, the accused went to his room and locked the door from inside.

10. Brij Raj Singh P.W. 2 was sent to the Government Hospital, Barhan for medical examination. Dr. Govind Prasad P.W.3 found the following injuries on the person of Brij Raj Singh, P.W. 2:

1. Round lacerated wound 0.3 cm x 0.3 cm on right side back 10 cms away from mid line 9 cms below border of scapula. Margins burnt and inverted, and tattooing present in an area of 5 cms. No pellets palpable. Bleeding present.

2. Lacerated wound of exit 1.5 cm x 0.5 cm on right side back 0.8 cm away and lateral from injury no. 1. Skin burnt and tattooing present in the area of 5 cm x 5 cms. Merging of the wound inverted. No pellets palpable.

11. The Doctor opined that the injuries were caused by a firearm. He advised that x-rays be taken and that the injuries be kept in observation. In his opinion, the injuries were caused by a gun shot and were of fresh duration. In his opinion, the injuries could have been caused around 4 p.m. The doctor sent the memo Ex. Ka-4 on the same day, informing the case of Medico legal nature to the Barhan Police Station.

12. The autopsy on the deceased was conducted by Dr. Ram Kumar Gupta, P.W.5, Medical Officer, SNM Hospital, Firozabad, District Agra. It revealed the following ante-mortem injuries on the deceased:

1. Gun shot wound of entry 2.5 cm x 2.5 cm x through and through on right side neck 2 cm lateral to midline of neck front aspect.

2. Gun shot wound of exit 5 cm x 4 cm x through and through on right side back of neck 5 cm below right ear corresponding to injury no. 1 with margins averted.

The Doctor opined that the cause of death was due to shock and hemorrhage as a result of ante-mortem injury.

13. The prosecution examined Shiv Charan P.W.1, Brij Raj Singh P.W.2 and Yad Ram P.W.4 as eye witnesses of the occurrence. Dr. Govind Prasad P.W.3, Medical Officer In- charge, who had medically examined Brij Raj Singh, proved the injury report Ext. Ka 3. Dr. Ram Kumar Gupta P.W. 5, who had conducted autopsy on the dead body of the deceased, was also examined. On internal examination, he found semi digested food material in the small intestine and there was faecal matter present in the large intestines. He prepared the post-mortem report Ex. Ka-5. In his opinion, the death of the deceased had taken place around 4 p.m. on 14.3.79 on account of the said injuries and shock.

14. The accused was charged with killing the deceased under section 302 of the Indian Penal Code (For short, IPC) and with causing simple injuries to the injured under section 323 IPC. He was also charged with attempting to murder Brij Raj under section 307 IPC. The accused appellant denied the charges, pleaded not guilty and asked to be tried.

15. The crucial question which arose for consideration was whether the injuries caused to Brij Raj Singh P.W.2 could have been caused by the same shot that killed the deceased. If that was possible, the prosecution version became probable. But if the shot that killed the deceased and the shot that

caused injuries to Brij Raj Singh were from different weapons, then the defence version was more probable. Shri B. Rai, Ballistic Expert, Forensic Science Laboratory, U.P. was called as court witness No.1. He was asked to explain the nature of the 12 bore cartridges and give an opinion, for which he wanted time to carry out experiments in the laboratory. The gun was given to him and he performed a test in his laboratory in the light of the statements of the eye-witnesses, medical report and site-plan. He submitted his report, Ex. C- Ka.1, wherein he clearly opined that injuries Nos. 1 and 2 of the deceased were possible by the gun Ex.3 of the accused and injuries Nos.1 and 2 of the injured Brij Raj Singh were possible by another fire. By "fire", it is clear from the record that the Ballistic Expert was referring to a "firearm".

16. Ultimately, we must answer the following question:

> Whether the prosecution story of a single shot causing injury to two persons, that is bullet injury to deceased and pellet injury to Brij Raj Singh, with the accused as the aggressor, stands sufficiently proved beyond reasonable doubt?

17. In order to decide whether a single shot was fired or in fact two different shots were fired, we must carefully examine the versions of the prosecution and the defence and the report of the Ballistic Expert. According to the trial court, the medical evidence coupled with the Ballistic Expert report revealed the existence of two fires from two weapons and as such was inconsistent with the prosecution story. The trial court further provided that it is difficult to separate falsehood from the truth, as some material aspects of the occurrence appeared to have been deliberately withheld. "One has to separate the chaff from the grain and it is difficult to lay hand upon what part of the prosecution evidence is true and what part is untrue". According to the accused, the trial court had taken a reasonable and possible view of the entire evidence on record.

18. The post-mortem report Ex. Ka-5, photo lash Ex. Ka-7 and the statement of Dr. Ram Kumar Gupta P.W.5 indicate that the wound of entry was on the right side of the neck 2 cm. lateral middle line on front aspect. The exit wound was on the right side back of neck 5 cm. below the right ear. This means that the bullet had entered from the front side of the neck from a distance of 2 cm. lateral to middle line, and it had come out from the back of the neck at a place 5 cm. below the right ear. In this way, the trial court reasoned that the barrel of the gun, when discharging, was slanting vertical. The mouth of the barrel was upward and its butt downward. The barrel and the butt were not horizontal to the ground at that time.

19. The trial court observed that injury no. 1 (wound of entry) on Brij Raj Singh P.W.2 was on the right side of his back 10 cm. away from the mid line, 9 cms. below the lower border of scapula. Injury no. 2 (wound of exit) was on the right side of his back 8 cm. away and lateral from injury no.1. This means that the exit wound was by the side of the entry wound at a distance of 8 cm.

20. The dictionary meaning of `lateral' is "by the side" and this means that the two injuries caused by pellets to Brij Raj Singh P.W.2 were horizontal and not vertical. The trial court opined that the single shot could not have caused vertical injury to one person and horizontal injury to another. It found it doubtful and not sufficiently proved that the same shot could have injured Brij Raj Singh

and killed the deceased.

21. This conclusion is further fortified by the report of the Ballistic Expert Sri B. Rai court witness No.1. He has given a definite opinion after making actual experiments by firing shots. This was done from the distance at which the occurrence was said to have taken place. The eye-witnesses had testified to this distance. The Ballistic Expert opined that the injuries to Brij Raj Singh P.W.2 were from a different shot from the one that killed the deceased.

22. The relevant part of the evidence of the Ballistic Expert reads as under:

> "2. Question- Whether bullet and Chharras both be used in 12 bore gun or not?
>
> Ans.- 12 bore gun have no bullet. It has small chharas, big chharas or one single ball shot with diameter about 0645."

23. The Ballistic Expert after studying the post-mortem report observed as under:

> "Studying the Post Mortem report No. 51/79 of deceased Ghurey Lal and injury report of Brijraj Singh dated 14.3.79, statement of doctor and witnesses and site plan and keeping the result of above experiments in mind, I reached in conclusion that injury No. 1 and 2 possible to sustain to deceased Ghurey Lal by this gun from the distance of 10 feet and injury No. 1 and 2 of injured Brij Raj Singh seems to sustain by some other shot."

24. The Ballistic Expert categorically stated that in cartridges of standard 12 bore shot guns, bullets from other rifles cannot be used with small and big chharas (pellets). Therefore, the trial court concluded that both the injuries were not possible by a single firearm.

25. Leading experts of forensic science, particularly ballistic experts, do not indicate that from a single cartridge both bullets and pellets can be fired. Professor Apurba Nandy in his book "Principles of Forensic Medicine", first published in 1995 and reprinted in 2001, discussed cartridges. Professor Nandy mentioned that in some cases, instead of multiple pellets, a single shot or metallic ball, usually made of lead, is used. We note that the discussion regarding cartridges exclusively mentions pellets. No mention of bullets and pellets in cartridges is found in the numerous volumes of scholarly literature that we have consulted. Relevant discussion reads as under: p. 241 "The Cartridges (the ammunitions)-

The cartridge of a shotgun and the cartridge of a rifled weapon are essentially different in their makes.

The cartridge of a shot gun - (Fig. 10.69) The cartridge of a shotgun has the following parts and contents-

1. The cartridge case - The longer anterior part of the cartridge case is made of card board. The posterior part and the posterior surface is made of brass. The margin of the breach end of the cartridge case is rimmed, so that, the cartridge can be properly placed inside the chamber and with pressure on the rim the empty cartridge case can be easily ejected out of the chamber. The anterior margin of the cartridge case is twisted inward to keep the pellets and other materials inside the case compact. The anterior part of the cartridge case is made of cardboard, for which, with production of gas inside the cartridge case it can slightly expand so that, the twisted grip by the anterior margin will be released and the pellets can come out of the case. The posterior metallic part keeps the shape of the breach end of the cartridge intact. It helps to maintain the right position of the cartridge in the chamber, so that, the percussion pin of the hammer strikes the percussion cap rightly at the breach surface of the cartridge. At the central part at the breach end inside the cartridge case is the percussion cap.

2. The percussion cap - It contains primer or priming mixture and there are some vents or openings on the wall of the percussion cap. When the posterior surface of the percussion cap is struck by the percussion pin, the priming mixture which consists of a mixture either of mercury fulminate, pot, pot, chlorate and antimony sulphide or of antimony sulphide with lead styphnate, lead peroxide, barium nitrate or tetracene, gets ignited due to the pressure and friction and fire comes out through the vents or openings on the wall of the percussion cap.

3. Contents inside the cartridge case.

Surrounding the percussion cap is the gun powder or the propellant charge which cannot ignite by pressure or friction and which on being ignited does not produce flame but produces huge amount of gas. Usually the gunpowder of the shotguns contains charcoal, pot, nitrate and sulphur. This combination of the gunpowder is known as black powder, as it produce much smoke. Now-a-days semi smokeless gun powder is in use in shot guns which is a combination of 80% of black powder and 20% of smokeless powder. Smokeless powder is ordinarily used in the cartridges of rifles (nitrocellulose or a combination of nitrocellulose and nitroglycerine). The black powder produces 200 - 300 ml. of gas per grain. In front of the gunpowder, inside the cartridge case, there is a thin cardboard disc. In front of the cardboard, disc is placed the wad. The wad is made of soft substance like, felt, cork, straw or rug. In front of the wad, there is another card board disc. In front of this disc, the pellets are placed. The pellets are spherical projectiles used in shot guns. Their size may be variable, according to the need and make. One ounce of pellets may consist of 6 to 2,600 of them. In front of the pellets there is another cardboard disc on the anterior margin of which the anterior margin of the cartridge case is twisted. The functions of the wad are to give compactness to the gunpowder, to prevent admixture of propellant charge and the pellets and prevent leakage of the gas produced after the firing. Wad also cleans the inner surface of the barrel after the pellets pass out through the barrel. To facilitate this cleaning, some greasy material is soaked in the wad. In between the propellant charge and the wad there is a cardboard disc so that the greasy substance in the wad will not be soaked by the propellant charge and become useless. In between the wad and the pellets there is a disc which in one hand prevents impregnation of the pellets in the soft wad and on the other, prevents leakage of the greasy substance from the wad in the pellets which would otherwise become adhesive to each other loosing their dispersion capacity. The anterior - most disc, placed in

front of the pellets, give compactness to the pellets and the whole content of the cartridge case.

Shots of different sizes are suitable for different purposes. Accordingly "Buck shots" or "Bird shots" have different sized shots or pellets for hunting wild birds or other prey.

In some cases instead of multiple pellets a single hot or metallic ball, usually made up of lead, is used. "Rifled slugs" are single shot projectiles for shot guns with prominent parallel grooves on the surface."

26. In this book, the assessment of the direction of firing from the margin of the wound of entrance has also been given, which reads thus: p. 257 "Assessment of the direction of firing from the margin of the wound of entrance -

(i) (a) In case of shotgun injury, the pattern of dispersion of the pellets give the direction of the firing. The pellets disperse over wider area as it travels more. Hence firing is suspected to have been from the side opposite to the side of wider dispersion of the pellets. ....."

27. "Firearms in Criminal Investigation and Trials" was written by a distinguished professor Dr. B.R. Sharma. He has written in some detail about 12 bore guns. This book also defines Pellet Pattern which reads thus: p.204 "Pellet Pattern The area covered (pellet spread) by the pellets fired from a shotgun is proportional to the distance between the muzzle of the firearm and the target. Greater the range, greater is the area covered by the pellets. The spread of the pellets is affected mainly by the length of the barrel of the firearm and its muzzle characteristics (whether it is choked or not). The condition of the ammunition also affects the results. If experiments are performed with the same firearm and ammunition of the same make and batch, the test patterns provide fairly accurate estimates of the range.

Generally, the whole charge enters the body en masse up to a range of about two metres in a factory-made 12-bore shotgun. It forms a rat-hole of about two to six centimetres in diameter. The rat-hole is surrounded by individual holes when the range of fire is about two to seven metres..."

28. The trial court stated that in the FIR itself it is mentioned that the injuries to Brij Raj Singh were by pellets and that of the deceased by a bullet. The Ballistic Expert has stated that the cartridge containing pellets cannot contain a bullet. Accordingly, the trial court reasoned that two weapons were used.

29. The Ballistic Expert is a disinterested, independent witness who has technical knowledge and experience. It follows that the trial judge was fully justified in placing reliance on his report.

30. The trial court also observed that removing the body of the deceased from the place of occurrence creates doubt that the prosecution was planning to substitute another story for the real facts. As such, the possibility that the deceased and his group were the aggressors is not ruled out. It is possible that pharsa and lathi blows had made the marks that were found on the gun. The gun may have snatched all of a sudden, causing it to fire upon the deceased and Brij Raj. Under the

circumstances of the case, the use of another weapon, which had caused injuries to Brij Raj Singh P.W.2, is also not ruled out.

31. The trial court further observed that the substratum of the prosecution story about the injuries to Brij Raj Singh is not established beyond reasonable doubt and the story of shooting the deceased by the same shot fired by the accused is not separable from other doubtful evidence of eye- witnesses. The circumstances show that the possibility of aggression on the part of the complainant side is not ruled out, then the benefit of doubt for killing the deceased by the accused would also go to the accused.

32. The trial court also found force in the plea of right of private defence as set up by the accused. The trial court mentioned that there is force in this argument where the circumstances of the case show that two fire arms were used in the occurrence. The accused was all alone in his house at that time. The availability of a second weapon is possible only when the complainant side had brought it to the scene. This circumstance supports the defence case, that the complainants' side was the aggressor and they had come armed with weapons to the scene. It follows that the accused would apprehend grievous hurt and danger to his life. Accordingly, the right of self defence was open to him.

33. In the concluding paragraph of the judgment, the trial court observed that when neither the prosecution nor the defence version is complete, then it is obvious that both the parties are withholding some information from the court. The burden of proving the charge to the hilt lies upon the prosecution. It has failed to discharge its burden. Thus, the benefit has to go to the accused. According to the trial court, the accused could not be convicted for the charges framed against him. He was entitled to get the benefit of doubt and, consequently, the accused had to be acquitted of the charges under sections 302, 307 and 323 IPC.

34. The State, aggrieved by the trial court's judgment, preferred an appeal before the High Court.

35. The High Court in appeal re-appreciated the entire evidence and came to the conclusion that the trial court's judgment was perverse and unsustainable. It therefore set aside the trial court judgment and convicted the accused under section 302 IPC for the murder of the deceased and under section 324 IPC for injuring Brij Raj Singh and sentenced him to life imprisonment and for six months R.I. respectively.

36. Against the impugned judgment of the High Court, the accused appellant has preferred appeal to this court. We have been called upon to decide whether the trial court judgment was perverse and the High Court was justified in setting aside the same or whether the impugned judgment is unsustainable and against the settled legal position?

37. We deem it appropriate to deal with the main reasons by which the trial court was compelled to pass the order of acquittal and the main reasons of the High Court in reversing the judgment of the trial court.

MAIN REASONS FOR ACQUITTAL BY THE TRIAL COURT:

38. The trial court acquitted the accused for the following reasons:

> 1. The prosecution story of single shot injury to two persons one standing horizontally and the other vertically stands totally discredited by the medical and the evidence of Ballistic Expert.
>
> 2. According to the FIR, the deceased received a spherical ball (ball shot) bullet injury and Brij Raj Singh P.W.2 received pellet injuries. The accused's gun had a cartridge that could only contain pellets. The Ballistic Expert has clearly stated that a cartridge containing pellets cannot contain a bullet. As such, it appears that two weapons were used.
>
> 3. Dr. Ram Kumar Gupta, P.W.5 who conducted the post-mortem of the deceased, clearly stated that the deceased received injuries from a bullet whereas Dr. Govind Prasad Bakara who had examined Brijraj Singh P.W.2 clearly stated that both injuries were caused by a pellet.

Therefore, according to medical evidence coupled with the evidence of the Ballistic Expert, two firearms must have been used. This version is quite inconsistent with the prosecution story.

4. The injuries received by Brij Raj Singh P.W.2 were from the back side and the injury received by the deceased was from the front side and this shows that two weapons may have been used.

5. Removal of the body of the deceased from the place of occurrence also created doubt with regard to the veracity of the prosecution version.

6. The possibility that the deceased and the complainant's side were aggressors and had gone there and caused pharsa and lathi blows on the accused cannot be ruled out because of the marks on the gun Ex.3. That the said gun was fired in snatching all of a sudden, injuring the deceased also cannot be ruled out from the circumstances of the case.

7. The trial court did not discard the defence version of right of private defence as pleaded by the accused.

8. The trial court observed that it is difficult to separate falsehood from the truth, where some material aspects of the occurrence seem to have been deliberately withheld. It is a well- established principle of criminal jurisprudence that when two possible and plausible explanations co-exist, the explanation favourable to the accused should be adopted. MAIN REASONS FOR REVERSAL OF ACQUITTAL ORDER:

> 39. The High Court gave the following reasons for setting aside the acquittal:

1. A perusal of the post-mortem report goes to show that autopsy conducted on the dead body of the deceased revealed ante-

mortem gunshot wound of entry 2.5 cm x through and through on right side neck 2 cm lateral to midline of neck front aspect having corresponding wound of exit 5 cm x 4 cm on right side back of neck 5 cm below right ear. Therefore, this injury was almost horizontal.

2. Medical examination of injured Brij Raj Singh revealed a round lacerated wound of entry 0.3 cm x 0.5 cm on right side back 10 cm away from midline and 9 cm below lower border of scapula having wound of exit 1.5 cm x 0.5 cm x 0.5 on right side back 0.8 cm away and lateral from injury no. 1. Thus, this injury was also almost horizontal.

3. The observation made by the trial judge that firearm injury caused to the deceased was vertical and to that of Brij Raj Singh horizontal is wholly fallacious.

4. A layman does not understand the distinction between a cartridge containing pellets and the bullet. In common parlance, particularly in villages when a person sustains injuries by gun shot, it is said that he has received `goli' injury. Ghurey Lal fired at his uncle with his gun causing him Goli (bullet) injury and Brij Raj Singh also received pellet (chhara) injury which goes to show that injuries received by them were caused by two different weapons. There is hardly any difference between bullet and pellet for a layman. From 12 bore gun cartridge is fired and 12 bore cartridge always contain pellets though size of pellets may be different.

5. A perusal of the post-mortem reports goes to show that autopsy conducted on the dead body of the deceased revealed ante- mortem gun shot wound of entry 2.5 cms.

through and through on right side neck 2 cm lateral to midline of neck front aspect having corresponding wound of exit 5 cm x 4cm on right side back of neck 5 cm below right ear. Therefore, this injury was almost horizontal.

6. The medical examination of injured Brij Raj Singh revealed a round lacerated wound of entry 0.3 cm x 0.5 cm on right side back 10 cm away from midline and 9 cm below lower border of scapula having wound of exit 1.5 cm x 0.5 cm x 0.5 cm on right side back 0.8 cm away and lateral from injury no.1. Thus, this injury was also almost horizontal.

7. The learned trial judge had noted the evidence of B. Rai, Ballistic Expert, C.W.1 that both the injuries would have been caused by two shots. While B. Rai, Ballistic Expert, C.W.1 had given the said opinion, he had also stated in his cross- examination by the prosecution that if the assailant fired from place `C' and the person receiving pellet injury standing at place `B' would have turned around, on dispersal of pellets he could have received the pellet injuries if deceased and injured both would have stood in the same line of firing.

OUR CONCLUSIONS:

40. We disagree with the High Court. Admittedly, the deceased died of a bullet injury whereas Brij Raj Singh, P.W. 2 received pellet injuries. It is well settled that a cartridge cannot contain pellet and bullet shots together. Therefore, the injuries on deceased and injured P.W. 2 clearly establish that two shots were fired from two different fire arms.

41. The High Court also observed that the laymen, meaning thereby the villagers, hardly know the difference between a bullet and a pellet. This finding has no basis, particularly in view of the statement of all the witnesses on record. Wherever the witnesses wanted to use `bullet' they have clearly used `Goli' or `bullet' and wherever they wanted to use `pellet' they have clearly used the word `Chharra' which means pellets, so to say that the witnesses did not understand the distinction between the two is without any basis or foundation.

42. Mr. Sushil Kumar, learned senior advocate appearing for the appellant, submitted that the judgment of the trial court was based on the correct evaluation of the evidence and the view taken by the trial court was definitely a reasonable and plausible. Therefore, according to the settled legal position, the High Court was not justified in interfering with the judgment of the trial court.

43. Shri Ratnakar Das, learned senior advocate appearing for the respondent State submitted that the impugned order of the High Court is consistent with the settled legal position. He submitted that once an order of acquittal is challenged then the appellate court has all the powers which are exercised by the trial court. We agree that the appellate court is fully empowered to re-appreciate and re-evaluate the entire evidence on record.

44. We deem it appropriate to deal with some of the important cases which have been dealt with under the 1898 Code by the Privy Council and by this Court. We would like to crystallize the legal position in the hope that the appellate courts do not commit similar lapses upon dealing with future judgments of acquittal.

45. The earliest case that dealt with the controversy in issue was Sheo Swarup v. King Emperor AIR 1934 Privy Council

227. In this case, the ambit and scope of the powers of the appellate court in dealing with an appeal against acquittal has been aptly elucidated by the Privy Council. Lord Russell writing the judgment has observed as under: (at p. 230):

"..the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in

> disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.."

The law succinctly crystallized in this case has been consistently followed by this Court. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. The appellate court undoubtedly has wide powers of re-appreciating and re- evaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally ill- founded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse.

46. This Court again in the case of Surajpal Singh & Others v. State, AIR 1952 SC 52, has spelt out the powers of the High Court. The Court has also cautioned the Appellate Courts to follow well established norms while dealing with appeals from acquittal by the trial court. The Court observed as under:

> "It is well established that in an appeal under S. 417 Criminal P.C., the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

47. This Court reiterated the principles and observed that presumption of innocence of accused is reinforced by an order of the acquittal. The appellate court could have interfered only for very substantial and compelling reasons.

48. In Tulsiram Kanu v. The State, AIR 1954 SC 1, this Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.

49. In the same year, this Court had an occasion to deal with Madan Mohan Singh v. State of Uttar Pradesh, AIR 1954 SC 637, wherein it said that the High Court had not kept the rules and principles of administration of criminal justice clearly before it and that therefore the judgment was vitiated by non-advertence to and mis-appreciation of various material facts transpiring in evidence. The High Court failed to give due weight and consideration to the findings upon which the trial court based its decision.

50. The same principle has been followed in Atley v. State of U.P. AIR 1955 SC 807 (at pp. 809-10 para 5), wherein the Court said:

> "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."

51. The question was again raised prominently in Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217. Bose, J. expressing the majority view observed (at p.220):

> "It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong; Ajmer Singh v. State of Punjab (AIR 1953 SC 76, at pp.77-78); and if the trial Court takes a reasonable view of the facts of the case, interference under S. 417 is not justifiable unless there are really strong reasons for reversing that view. Surajpal Singh v. State AIR 1952 SC 52 at
>
> 54."

52. In Balbir Singh v. State of Punjab AIR 1957 SC 216, this Court again had an occasion to examine the same proposition of law. The Court (at page 222) observed as under:

> "It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and 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 must also be kept in mind, and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge."

53. A Constitution Bench of this Court in M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, observed as under:

"There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled for the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. .....

The test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterize the findings recorded therein as perverse.

The question which the Supreme Court has to ask itself, in appeals against conviction by the High Court in such a case, is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was erroneous. In answering this question, the Supreme Court would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court."

54. In Noor Khan v. State of Rajasthan, AIR 1964 SC 286, this Court relied on the principles of law enunciated by the Privy Council in Sheo Swarup (supra) and observed thus:

"Sections 417, 418 and 423 give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, 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 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."

55. In Khedu Mohton & Others v. State of Bihar, (1970) 2 SCC 450, this Court gave the appellate court broad guidelines as to when it could properly disturb an acquittal. The Court observed as under:

> "3. It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417, Cr. P.C. are as extensive as its powers in appeals against convictions but that court at the same time should bear in mind the presumption of-innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal."

(emphasis supplied)

56. In Shivaji Sahabrao Bobade & Another v. State of Maharashtra, (1973) 2 SCC 793, the Court observed thus:

> "An appellant aggrieved by the overturning of his acquittal deserves the final court's deeper concern on fundamental principles of criminal justice.....
>
> ..... But we hasten to add even here that, although the learned judges of the High Court have not expressly stated so, they have been at pains to dwell at length on all the points relied on by the trial court as favourable to the prisoners for the good reason that they wanted to be satisfied in their conscience whether there was credible testimony warranting, on a fair consideration, a reversal of the acquittal registered by the court below. In law there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration, In our view the High Court's judgment survives this exacting standard."

57. In Lekha Yadav v. State of Bihar (1973) 2 SCC 424, the Court following the case of Sheo Swarup (supra) again reiterated the legal position as under:

> "The different phraseology used in the judgments of this Court such as-
>
> (a) substantial and compelling reasons:
>
> (b) good and sufficiently cogent reasons;
>
> (c) strong reasons.

are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified."

58. In Khem Karan & Others v. State of U.P. & Another AIR 1974 SC 1567, this Court observed:

> "Neither mere possibilities nor remote possibilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony."

59. In Bishan Singh & Others v. The State of Punjab (1974) 3 SCC 288, Justice Khanna speaking for the Court provided the legal position:

> "22. It is well settled that the High Court in appeal under Section 417 of the CrPC has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless is be found expressly stated be in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should 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; & (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."

60. In Umedbhai Jadavbhai v. The State of Gujarat (1978) 1 SCC 228, the Court observed thus:

> "In an appeal against acquittal, the High Court would not ordinarily interfere with the Trial Court's conclusion unless there are compelling reasons to do so inter alia on account of manifest errors of law or of fact resulting in miscarriage of justice."

61. In B.N. Mutto & Another v. Dr. T.K. Nandi (1979) 1 SCC 361, the Court observed thus:

> "It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons. [Salmond J. in his charge to the jury in R.V. Fantle reported in 1959 Criminal Law Review 584.]"

{emphasis supplied}

62. In Tota Singh & Another v. State of Punjab (1987) 2 SCC 529, the Court reiterated the same principle in the following words:

> "This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

(emphasis supplied)

63. In Ram Kumar v. State of Haryana 1995 Supp. (1) SCC 248, this Court had another occasion to deal with a case where the court dealt with the powers of the High Court in appeal from acquittal.

The Court observed as under:

> ".. the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 386) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of of seeing the witness. No doubt it is settled law that if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. We shall, therefore, examine the evidence and the material on record to see whether the conclusions recorded by the Trial Court in acquitting the appellant are reasonable and plausible or the same are vitiated by some manifest illegality or the conclusion recorded by the Trial Court are such which could not have been possibly arrived at by any Court acting reasonably and judiciously which may in other words be characterized as perverse."

64. This Court time and again has provided direction as to when the High Courts should interfere with an acquittal. In Madan Lal v. State of J&K, (1997) 7 SCC 677, the Court observed as under:

> "8. ..... that there must be "sufficient and compelling reasons" or "good and sufficiently cogent reasons" for the appellate court to alter an order of acquittal to one of conviction....."

65. In Sambasivan & Others v. State of Kerala (1998) 5 SCC 412, while relying on the case of Ramesh Babulal Doshi (Supra), the Court observed thus:

> 7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

66. In Bhagwan Singh & Others v. State of M.P. (2002) 4 SCC 85, the Court repeated one of the fundamental principles of criminal jurisprudence that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view

which is favourable to the accused should be adopted. The Court observed as under:-

> "7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

67. In Harijana Thirupala & Others v. Public Prosecutor, High Court of A.P., Hyderabad (2002) 6 SCC 470, this Court again had an occasion to deal with the settled principles of law restated by several decisions of this Court. Despite a number of judgments, High Courts continue to fail to keep them in mind before reaching a conclusion. The Court observed thus:

> "10. The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case.
>
> 11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.
>
> 12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal

> lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."

(emphasis supplied)

68. In C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 had to reiterate the legal position in cases where there has been acquittal by the trial courts. This Court observed thus:

> "6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court."

69. In State of Karnataka v. K. Gopalkrishna, (2005) 9 SCC 291, while dealing with an appeal against acquittal, the Court observed:

> "In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal."

70. In The State of Goa v. Sanjay Thakran, (2007) 3 SCC 755, this Court relied on the judgment in State of Rajasthan v. Raja Ram (2003) 8 SCC 180 and observed as under:

> "15. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The

> golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. ... The principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

The Court further held as follows:

> "16. 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 characterized 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."

71. In Chandrappa & Others v. State of Karnataka (2007) 4 SCC 415, this Court held:

> "(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."

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert,

etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

74. Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution.

75. We have considered the entire evidence and documents on record and the reasoning given by the trial court for acquitting the accused and also the reasoning of the High Court for reversal of the judgment of acquittal. We have also dealt with a number of cases decided by the Privy Council and this Court since 1934. In our considered opinion, the trial court carefully scrutinized the entire evidence and documents on record and arrived at the correct conclusion. We are clearly of the opinion that the reasoning given by the High Court for overturning the judgment of the trial court is wholly unsustainable and contrary to the settled principles of law crystallized by a series of judgment.

76. On marshalling the entire evidence and the documents on record, the view taken by the trial court is certainly a possible and plausible view. The settled legal position as explained above is that if the trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views. The difference in treatment of the case by two courts below is particularly noticeable in the manner in which they have dealt with the prosecution evidence. While the trial court took great pain in discussing all important material aspects and to record its opinion on every material and relevant point, the learned Judges of the High Court have reversed the judgment of the trial court without placing the very substantial reasons given by it in support of its conclusion. The trial court after marshalling the evidence on record came to the conclusion that there were serious infirmities in the prosecution's story. Following the settled principles of law, it gave the benefit of doubt to the accused. In the impugned judgment, the High Court totally ignored the settled legal position and set aside the well reasoned judgment of the trial court.

77. The trial court categorically came to the finding that when the substratum of the evidence of the prosecution witnesses was false, then the prosecution case has to be discarded. When the trial court finds so many serious infirmities in the prosecution version, then the trial court was virtually left with no choice but to give benefit of doubt to the accused according to the settled principles of criminal jurisprudence.

78. On careful analysis of the entire evidence on record, we are of the view that the reasons given by the High Court for reversing the judgment of acquittal is unsustainable and contrary to settled

principles of law. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.

79. On consideration of the totality of the circumstances, the appeal filed by the appellant is allowed and the impugned judgment passed by the High Court is set aside. The appellant would be set at liberty forthwith unless required in any other case.

.....J. (R. V. Raveendran) .....J. (Dalveer Bhandari) New Delhi;

July 30, 2008.