Guru Dutt Pathak vs The State Of Uttar Pradesh Home ... on 6 May, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2257, AIRONLINE 2021 SC 234

Author: M.R. Shah

Bench: M.R. Shah, Dhananjaya Y. Chandrachud

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 502 OF 2015

Guru Dutt Pathak …Appellant

Versus

State of Uttar Pradesh …Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.01.2014 passed by the High Court of Judicature at Allahabad in Government Appeal No. 2895 of 1982, by which the High Court has allowed the said appeal preferred by the State and has reversed the judgment and order of acquittal passed by the learned trial Court acquitting the accused for the offences punishable under Section 302 r/w 34 of the IPC and consequently has convicted the appellant – original accused no.4 for the aforesaid offences, the original accused no.4 has preferred the present appeal.

2. That as per the case of the prosecution the deceased was the Pradhan of the village for more than two decades. The accused were having grudge against him. On 6.10.1981 at about 7:00 a.m., the deceased was going, as usual, to attend the call of nature towards the bank of river Yamuna situated near his village. When the deceased reached near Basic School, Nagarwar, all the four accused suddenly emerged out from the Bajra field of Ram Sajiwan. Accused Murlidhar Pathak and Gurudutt Pathak were armed with lathis, Dharmraj Pathak was armed with spear and Ramraj

Pathak was armed with pistol. The deceased was attacked by the accused with spear and lathis. The deceased fell down on earth. They crushed his head with lathis. On hue and cry, first informant Satrughan Pathak, his brother Ramsukh Pathak, Lalmani Pathak and Shiv Shankar, who were already there at a short distance, rushed towards the deceased whereupon accused Ramraj Pathak fired a shot from his pistol towards the deceased and all the assailants ran away along with their weapons. The deceased received his instantaneous death at the spot.

2.1 Satrughan Pathak, son of the deceased, lodged an FIR against all the accused persons for the offences punishable under Section 302 r/w 34 IPC. The FIR was investigated by one Sukhram Sonkar, the Investigating Officer. He recorded the statements of the witnesses. He prepared the Panchnama at the spot. He arrested the accused Murlidhar Pathak on 07.10.1981 at about 4:00 a.m. after a little chase and during the course of his arrest police personnel inflicted injuries at his person near bridge of river Fagawa.

2.2 Dr. Nisar Ahmad conducted the post-mortem. He noticed the following ante-mortem injuries on the body of the deceased:

i) Depressed fracture of skull with fracture of left parietal bone.

In fact all the bones were broken. Brain matter had been liquefied.

ii) Multiple abrasion on left pinna.

iii) Incised wound over the scalp 5 inch above ear T.U. directed, 2 inch x 2 inch. Brain matter going out.

iv) Lacerated wound above the occipital, 2 inch x 2 inch. Brain matter going out.

v) Incised wound over the left occiput, 2 inch x 1 inch.

vi) Incised wound over lateral aspect of palm, 1 inch x 1 inch x muscle deep.

vii) Lacerated wound on the posterior aspect of skull, 1 inch x 1 inch x muscle deep.

viii) Incised wound over the proximal of the occipital.

ix) Incised wound over the left parietal bone, 1 inch x 1 inch x brain cavity deep with brain matter going out.

x) Incised wound over the parietal bone, 1 inch x 1 inch. Brain matter was going out.

xi) Incised wound over the frontal bone, 1 inch x 1 inch. Brain matter going out.

As per the post-mortem report, the cause of the death was due to shock and haemorrhage as a result of the aforesaid injuries. 2.3 On completion of the investigation, the Investigating Officer filed the chargesheet against Murlidhar Pathak and three absconded accused. That after the remaining persons came to be arrested, as the case was triable exclusively by the Court of Sessions, the learned Chief Judicial Magistrate committed the case to the Court of Sessions. All the accused were charged for the offences punishable under Section 302/34 IPC for the murder of the deceased-Ram Aasare Pathak. All the accused denied the charges and therefore they came to be tried for the aforesaid offences.

2.4 To prove the case, the prosecution examined as many as eight witnesses. PW2 and PW4 were the eyewitnesses and PW7 was the Investigating Officer. At the end of the trial, the learned trial Court acquitted all the accused persons mainly on the grounds that PW1 to PW4 – eyewitnesses were related and interested witnesses; no independent witness has been examined; PW2 and PW4, sons of the deceased may be termed as chance witnesses; place of occurrence is not proved by the prosecution and there was no occasion for the deceased to reach at the alleged spot; absence of fire injuries at the person of the deceased; and prosecution has not explained the injuries on the accused Murlidhar Pathak.

3. Feeling aggrieved and dissatisfied with the order of acquittal passed by the learned trial Court, the State preferred appeal before the High Court. During the pendency of the appeal, accused nos. 1 to 3 died/expired and therefore the appeal against the appellant herein – original accused no.4 was proceeded further. That on re-appreciation of the entire evidence on record, by the impugned judgment and order, the High Court has allowed the appeal and has set aside the order of acquittal passed by the learned trial Court and consequently has convicted the appellant herein – original accused no.4 for the offences under Section 302/34 IPC and has sentenced him to undergo life imprisonment.

4. Feeling aggrieved and dissatisfied by the impugned judgment and order passed by the High Court reversing the order of acquittal and convicting the appellant – original accused no.4 for the offences under Section 302/34 IPC, original accused no.4 has preferred the present appeal.

5. Learned Advocate appearing on behalf of the appellant has made the following submissions:

> i) that the High Court has exceeded in its jurisdiction in reversing the well-reasoned judgment and order of acquittal passed by the learned trial Court and consequently convicting the accused;
>
> ii) that the learned trial Court, as such, committed no error in acquitting the accused;
>
> iii) that the motive has not been established and proved;

iv) that all the prosecution witnesses – so called eyewitnesses – PW1 to PW4 are all related and interested witnesses;

v) that no independent witness has been examined;

vi) that as rightly observed by the learned trial Court, PW2 & PW4 are the chance witnesses;

vii) that from the medical evidence there is no injury found from the fired arm and therefore it disproves the case of the prosecution;

viii) that the prosecution has failed to explain the injury on one of the accused – Murlidhar Pathak;

ix) that the medical evidence does not support the case of the prosecution'

x) that the FIR was ante-dated' and

xi) that the prosecution has failed to prove the exact place of the occurrence of the incident.

5.1 Learned counsel appearing on behalf of the appellant has submitted that as per catena of decisions of this Court when two views are possible and an order of acquittal passed by the learned trial Court is based on appreciation of evidence on record, the High Court shall not interfere with such an order of acquittal. It is submitted that in the present case the High Court has reversed the order of acquittal in an appeal under Section 378 Cr.P.C. and has exercised the powers/jurisdiction beyond the scope of Section 378 Cr.P.C.

5.2 Making the above submissions, it is prayed to allow the present appeal and set aside the impugned judgment and order passed by the High Court and restore the well-reasoned judgment and order of acquittal passed by the learned trial Court.

6. The present appeal is vehemently opposed by the learned Standing Counsel appearing on behalf of the respondent – State of Uttar Pradesh.

Learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has not committed any error in reversing the judgment and order of acquittal and consequently convicting the accused. 6.1 It is submitted that being the

first appellate court against the judgment and order of acquittal passed by the learned trial Court, the High Court is justified in reappreciating the entire evidence on record and coming to its conclusion. Reliance is placed on the decision of this Court in the case of Umedbhai Jadavbhai v. State of Gujarat (1978) 1 SCC 228.

6.2 It is submitted that by the impugned judgment and order the High Court has considered in detail the grounds on which the learned trial Court acquitted the accused and having found that the grounds on which the accused have been acquitted are not tenable at law and are just contrary to the evidence on record and are perverse, the High Court has rightly convicted the accused.

6.3 It is further submitted that in the present case the prosecution has established and proved the actual place of incident/occurrence and has explained the injuries on one of the accused – Murlidhar Pathak. 6.4 It is submitted that even in the 313 statement, the appellant – original accused no.4 has also stated about the enmity. It is submitted that therefore even according to the appellant – original accused no.4, there was an enmity between the deceased and the accused. 6.5 It is further submitted that one of the grounds on which the learned trial Court acquitted the accused was that no independent witness has been examined. It is submitted that when the witnesses who are examined are found to be reliable and trustworthy, mere non- examination of the independent witnesses shall not be fatal to the case of the prosecution.

6.6 It is further submitted that one another reason given by the learned trial Court which has been elaborately dealt with by the High Court was that neither there was any firearm injury nor the firearm was recovered. It is submitted that in the deposition of the eyewitnesses it has come on record that as per the case of the prosecution there was a fire shot but it was in air and no injury was sustained by the firearm. 6.7 It is submitted that in the present case the eyewitnesses PW2 & PW4 have fully supported the case of the prosecution and therefore the High Court has rightly convicted the accused.

7. We have heard the learned counsel for the respective parties at length. We have gone through and considered in detail the judgment and order of acquittal passed by the learned trial Court as well as the impugned judgment and order passed by the High Court reversing the acquittal and convicting the accused, to satisfy ourselves whether in the facts and circumstances of the case, the High Court is justified in reversing the judgment and order of acquittal passed by the learned trial Court and consequently convicting the accused.

7.1 We are conscious of the fact that this is a case of reversal of acquittal by the High Court. Therefore, the first and foremost thing which is required to be considered is, whether in the facts and circumstances of the case, the High Court is justified in interfering with the order of acquittal passed by the learned trial Court?

7.2 In the case of 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 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

"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 (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "... 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 AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC

755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 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 (2008) 10 SCC 450, 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 (2009) 9 SCC 368, 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 (2009) 4 SCC 271, 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: (SCC p. 286, para 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 (2009) 10 SCC 401.

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." (emphasis supplied) 7.2.1 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

> "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 (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636)." (emphasis supplied) 7.2.2 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, 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.

7.3 In the decision of this Court in the case of Vijay Mohan Singh v. State of Karnataka (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

> "31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233) "10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give

> due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case." 31.1. In Sambasivan v. State of Kerala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation 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 (1996) 9 SCC 225 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 (1999) 3 SCC 309, 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. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 809-10) "5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well- established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence. It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355, 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." (emphasis supplied) 7.4 In the case of Umedbhai Jadavbhai (supra), in paragraph 10, it is observed and held as under:

> "10. Once the appeal was rightly entertained against the order of acquittal, the High Court was 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 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." 7.5 In the case of Atley v. State of

Uttar Pradesh AIR 1955 SC 807, this Court has observed and held as under:

"5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In Our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal P. C. came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. The State 1952 CriLJ331; Wilayat Khan v. State of Uttar Pradesh, AIR 1953 SC 122. In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions." 7.6 In the case of K.Gopal Reddy v. State of Andhra Pradesh (1979) 1 SCC 355, 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.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, it is to be considered whether in the facts and circumstances of the case, the High Court is justified in interfering with the order of acquittal passed by the learned trial Court? 8.1 The grounds on which the learned trial Court acquitted the accused are narrated by the High Court in the impugned judgment, which are as under:

1. The motive assigned to respondents to commit the murder of Ram Aasare Pathak may be the reason of their false implication in this case;

2. Badri Prasad (P.W.1) and Lal Mani (P.W.3) are the chance witnesses whereas Shatrughan Prasad Pathak (P.W.2), Lal Mani (P.W.3) and Ram Ganesh Pathak (P.W.4) the witnesses of fact are related and interested witnesses inasmuch as Shatrughan Prasad Pathak (P.W.2) and Ram Ganesh Pathak (P.W.4) are the sons of the deceased wheareas Lal Mani (P.W.3) is relatives which is established on record;

3. No independent public witness has been examined. According to him, even P.W.2 and P.W.4 sons of the deceased may also be termed as chance witnesses;

4. Place of occurrence is not proved by the prosecution and there was no occasion for the deceased to reach at the alleged spot if at all he was going to attend the call of nature;

5. Absence of the firearm injury at the person of the deceased belied the presence of prosecution witnesses;

6. F.I.R. is antedated;

7. The prosecution has not explained the injury of accused Murlidhar Pathak;

8. Although respondents have not adduced any evidence in their defence to prove the fact that deceased sustained injuries at the door of Murlidhar Pathak or the injuries at his person was caused by mob or public, or Murlidhar Pathak received injuries at his own door at the instance of deceased, yet in any case, the possibility of exercise of right of private defence by respondents cannot be said to be improbable.

Each and every aforesaid ground has been elaborately dealt with by the High Court and on reappreciation of the entire evidence on record the High Court has specifically come to the conclusion that the findings recorded by the learned trial Court are perverse and thereafter the High Court has interfered with the judgment and order of acquittal passed by the learned trial Court.

9. So far as the submission on behalf of the accused that no motive has been established and proved is concerned, the High Court has elaborately dealt with the same. The High Court has rightly observed that when there is a direct evidence in the form of eyewitnesses and the eyewitnesses are trustworthy and reliable, absence of motive is insignificant. In the present case, in the 313 statement itself, the appellant – original accused no.4 has also stated that there was an enmity. Therefore, even according to the accused also, there was an enmity.

10. One another ground given by the learned trial Court while acquitting the accused was that no independent witness has been examined. The High Court has rightly observed that where there are clinching evidence of eyewitnesses, mere non-examination of some of the witnesses/independent

witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.

10.1 In the case of Manjit Singh v. State of Punjab (2019) 8 SCC 529, it is observed and held by this Court that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.

10.2 In the recent decision in the case of Surinder Kumar v. State of Punjab (2020) 2 SCC 563, it is observed and held by this Court that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated.

10.3 In the case of Rizwan Khan v. State of Chhattisgarh (2020) 9 SCC 627, after referring to the decision of this Court in the case of State of H.P. v. Pardeep Kumar (2018) 13 SCC 808, it is observed and held by this Court that the examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case.

11. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and when, as observed by the High Court, the prosecution witnesses have fully supported the case of the prosecution, more particularly PW2 & PW4 and they are found to be trustworthy and reliable, non-examination of the independent witnesses is not fatal to the case of the prosecution. Nothing is on record that those two persons, namely, Shiv Shankar and Bhagwati Prasad as mentioned in the FIR reached the spot were mentioned as witnesses in the chargesheet. In any case, PW2 & PW4 have fully supported the case of the prosecution and therefore non-examination of the aforesaid two persons shall not be fatal to the case of the prosecution.

12. Now so far as the submission on behalf of the accused that injury on one of the accused – Murlidhar Pathak has not been explained by the prosecution and reliance placed on the decision of this Court in the case of Dashrath Singh v. State of U.P. (2004) 7 SCC 408 is concerned, at the outset, it is required to be noted that the investigating officer

-PW7 in his examination-in-chief in paragraph 6 has specifically stated that when they tried to arrest the said accused at 4:00 a.m. in the early morning near the bridge, the said accused tried to run away; after scuffle he was arrested and that during that scuffle and arrest, he sustained injuries. A suggestion was put to him in the cross- examination that at the time of arrest the accused Murlidhar Pathak did not receive any injury, however, the same has been specifically denied that it is not true that he did not receive injury at the time of his arrest. Similar suggestions were made to other witnesses and the same were denied. Therefore, as such, it cannot be said that the prosecution has failed to explain the injury on the said accused. Even the aforesaid aspect has been considered in detail by the High Court and the said statement has been appreciated by the High Court on re-appreciating the entire evidence on record, more particularly the medical evidence and even the deposition of the doctors examined by the prosecution as well as by the defence.

12.1. Now so far as the reliance placed upon the decision of this Court in the case of Dashrath Singh (supra) is concerned, the observations made by this Court in the aforesaid decision are required to

be considered, considering the facts and circumstances of the case. In the said case, defence of the accused was that there was a free fight between both the parties and therefore the question arose with respect to the right of the private defence and/or who was the aggressor. Even otherwise in the said decision also, this Court referred to paragraph 17 of the decision of this Court in the case of Takhaji Hiraji v. Thakore Kubersing Chamansing (2001) 6 SCC 145 in paragraph 18, which reads as under:

> "17. ... the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.
>
> 18. The High Court was therefore not right in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons." 12.2 Thereafter, in paragraph 19, it is observed and held as under:
>
> "19. The injuries of serious nature received by the accused in the course of the same occurrence would indicate that there was a fight between both the parties. In such a situation, the question as to the genesis of the fight, that is to say, the events leading to the fight and which party initiated the first attack assumes great importance in reaching the ultimate decision. It is here that the need to explain the injuries of serious nature received by the accused in the course of same occurrence arises. When explanation is given, the correctness of the explanation is liable to be tested. If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident. The Court has then to consider whether such omission casts a reasonable doubt on the entire prosecution story or it will have any effect on the other reliable evidence available having bearing on the origin of the incident. Ultimately, the factum of non-explanation of injuries is one circumstance which has to be kept in view while appreciating the evidence of prosecution witnesses. In case the prosecution version is sought to be proved by partisan or interested witnesses, the non-explanation of serious injuries may prima facie make a dent on the credibility of their evidence. So also where the defence

> version accords with probabilities to such an extent that it is difficult to predicate which version is true, then, the factum of non-explanation of the injuries assumes greater importance. Much depends on the quality of the evidence adduced by the prosecution and it is from that angle, the weight to be attached to the aspect of non-explanation of the injuries should be considered. The decisions above- cited would make it clear that there cannot be a mechanical or isolated approach in examining the question whether the prosecution case is vitiated by reason of non-explanation of injuries. In other words, the non- explanation of injuries of the accused is one of the factors that could be taken into account in evaluating the prosecution evidence and the intrinsic worth of the defence version."

13. At this stage, it is required to be noted that in the present case even considering the defence on behalf of the accused when the deceased came near the door of the house of the one of the accused Murlidhar Pathak, he was using abusive language and there were a quarrel and the other village people might have caused injuries on the deceased. Therefore, the incident is not disputed by the accused. The place of occurrence of the incident has been established and proved by the prosecution as per the case of the prosecution. The accused have failed to lead any evidence that the incident had occurred near the door of the house of one of the accused. Even the place of incident suggested by the accused, if the Panchama is concerned, it does not support the case of the defence. The aforesaid aspect has been elaborately dealt with by the High Court in the impugned judgment and order. It has been established and proved by the prosecution by leading the evidence that the incident had taken place on the road near Primary Pathshala. The dead body was recovered from the road near Primary Pathshala and the blood stained Gamchha and tahmad were also recovered from that place. On the point of place of recovery of the dead body and recovery of the blood stained etc. is unchallenged. Therefore, the prosecution has proved the place of incident as stated in the FIR.

14. Now so far as one another ground assigned by the learned trial Court while acquitting the accused that there was no firearm injury on the person of the deceased and therefore the medical evidence is inconsistent with the ocular testimony is concerned, it is required to be noted that it was never the case of the prosecution that there was a firearm injury on the person of the deceased. Even as per the evidence of the witnesses, when after sustaining the injuries of lathi and spear, the deceased fell down on the earth when other persons started coming and while leaving from that place, one of the accused Ramraj Pathak fired his pistol towards the deceased. It was never the case of the witnesses that bullet hit the deceased. On the contrary, Shatrughan Prasad Pathak, PW2 has specifically stated that the deceased has not sustained any firearm injury, although Ramraj Pathak has fired at him.

15. We have carefully gone through the depositions of PW2 & PW4 who can be said to be the star witnesses and they are the eyewitnesses to the incident. From the deposition of PW2 (Hindi version, para 9), learned counsel appearing on behalf of the appellant has vehemently submitted that the said witness has specifically admitted that at the night of the incident, he was at 291, Malviya Nagar and after receiving the information he reached at the spot. However, there is an overwriting in para 9 and the words "not true" have been struck off by pen and what is overwriting is "it is true". Who made this overwriting is difficult to say at this stage? Even the aforesaid was not even pointed out

and/or submitted before the learned trial Court or even before the High Court. However, if we read the entire para 9 as a whole, it is very difficult to accept that he admitted that he was not present in the village in the morning and therefore his presence can be doubted. Be that as it may, even if for the time being evidence of PW2 is not considered and/or excluded, there is an overwhelming evidence in support of the prosecution in the form of PW4. His presence is not doubted. He is found to be trustworthy and reliable. His deposition is consistent with the allegations in the FIR. There is no reason to doubt his trustworthiness. Therefore, even the appellant can be and is rightly convicted relying upon the deposition of PW4, who is an eyewitness to the incident.

16. Now let us consider the case and/or defence on behalf of the appellant – original accused no.4. It was the case on behalf of the accused that the incident occurred at the door of the house of the accused Murlidhar Pathak and that Murlidhar Pathak, another accused, was being hurdled abuses and assaulted by the deceased and the mob inflicted injuries on the person of the deceased. Except the above statement, the same has not been established and proved by the defence by leading cogent evidence, more particularly when the accused have examined three defence witnesses. Nobody from the mob has been examined by them. Even in his 313 statement, the only defence of the appellant -accused no.4 was that he has been falsely implicated in the case due to enmity and that he was not there. He has not led any evidence to prove that he was elsewhere.

17. Considering the aforesaid facts and circumstances of the case and on re-appreciation of the evidence, when the High Court has come to the conclusion that the findings recorded by the learned trial Court while acquitting the accused were perverse and even contrary to the evidence on record and/or misreading of the evidence, the High Court has rightly interfered with the judgment and order of acquittal passed by the learned trial Court and has rightly convicted the accused. In the present case, the appellant – original accused no.4 was specifically named right from the very beginning in the FIR. He has been attributed the specific role. The same has been established and proved from the evidence of PW4 (even if the deposition of PW2 is for the time being ignored). No error has been committed by the High Court in interfering with the judgment and order of acquittal passed by the learned trial Court.

18. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court reversing the acquittal and convicting the accused. We are in complete agreement with the view taken by the High Court. The present appeal is accordingly dismissed.

19. As the appellant – Guru Dutt Pathak, original accused no.4 was granted interim bail up to 30.04.2021 and thereafter the same has not been extended by this Court and the present appeal is now dismissed, if the accused has not surrendered so far, he shall surrender himself forthwith to serve out the sentence.

……..J.
[Dr. Dhananjaya Y. Chandrachud]

New Delhi; ……..J.
May 06, 2021 [M.R. Shah]