Supreme Court of India
State Of U.P vs Krishna Gopal & Anr on 12 August, 1988
Equivalent citations: 1988 AIR 2154, 1988 SCR Supl. (2) 391
Author: M Venkatachalliah
Bench: Venkatachalliah, M.N. (J)

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
KRISHNA GOPAL & ANR.

DATE OF JUDGMENT12/08/1988

BENCH:
VENKATACHALLIAH, M.N. (J)
BENCH:
VENKATACHALLIAH, M.N. (J)
SEN, A.P. (J)

CITATION:
1988 AIR 2154 1988 SCR Supl. (2) 391
1988 SCC (4) 302 JT 1988 (3) 544
1988 SCALE (2)632

ACT:
Constitution of lndia 1950: Article 136-Supreme Court does not interfere with findings of fact reached by High Court unless vitiated by serious errors.

HEADNOTE:
The respondents were put on trial for offences under section 302 read with section 34, IPC. At the trial the prosecution mainly relied on the eye-witnesses and the statement of the deceased recorded by the Investigating Officer, which was sought to be used as a dying declaration. The defence assailed the credibility of the eye-witnesses as well as the authenticity of the dying declaration. The Sessions Judge accepted the prosecution case that notwithstanding the somewhat serious injuries inflicted on him, the deceased was in a position to instant the preparation of the First Information Report and to make the statement before the Investigating Officer. The respondents were convicted and sentenced to imprisonment for life.

In the appeal, the High Court, on re-assessment of the evidence, accepted the defence pleas, allowed the appeal and ordered acquittal.

Before this Court it was urged by the State that the

High Court fell into a serious error in its assumptive predication that injuries on the person on deceased were such as were likely to render him unconscious immediately and incapacitate him from making the dying declaration. It was accordingly urged that because the High Court had reversed the conviction on conjectures and not on sound reasoning. this Court should interfere.

On behalf of the respondents, it was urged that this Court should not interfere under Article 136 even if two views were possible on the evidence and the one in favour of the prosecution could be reached on reappreciation of the evidence as long as the view opted for could not be said to be altogether impossible on the evidence.

Allowing the appeal partly and remitting the case to the High Court for disposal on merits afresh, it was,

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HELD: (1) It was, no doubt, true that as a self-made rule of practice, this Court did not interfere with the findings of fact reached by the High Court, but judicial pronouncements themselves qualify this rule and justify interference where serious errors of assumption vitiated the findings. [398A]

State of U.P. v. Jashoda Nandan Gupta, AIR 1974 SC 753; State of Punjab v. Sucha Singh. AIR 1974 SC 343; State of A.P. v. P. Anjaneyulu, AIR 1982 SC 1598; State of U.P. v. Pussu, [l983] 3 SCR 294; Shivaji Sahebrao Bopade v. State of Maharashtra, [1974] 1 SCR 489 referred to.

(2) The principles laid down regarding the scope of the powers of the appellate Court in appeals against acquittal did not detract from the platitude of the Courts powers to review and reappreciate the evidence if the order of acquittal on review of the evidence was found to be grossly erroneous. These powers were not different from or inconsistent with those that the appellate Court had in an appeal against conviction; the difference was more in the manner of approach and the perspective rather than in the content of the power. The expressions "very substantial reasons" etc. used in several pronouncements which tend to qualify these powers did no more than to convey these principles. There was thus no immunity to an erroneous order from a strict appellate scrutiny. But the appellate court wherever it found justification to reverse an acquittal must record reasons why it found lower court wrong. [400E-H]

Sheo Swarup's case, 61 Indian Appeals 398; Noor Mohammad's case AIR 1945 PC 151; Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715; Chandra Kanta Debnath v. State of Tripura, AIR 1986 SC 606, referred to.

(3) Eye witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical-evidence, as the sole touchstone for the test of such credibility. [403B]

(4) What degree of probability amounted to `proof' was an exercise particular to each case. The concepts of probability, and the degrees of it, could not obviously be expressed in terms of units to be mathematically enumerated

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as to how many of such units constituted proof beyond reasonable doubt. There was an unmistakable subjective-element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common-sense and, ultimately, on the trained intuitions of the judge. [403D; 404B-C]

(5) Doubts would be called reasonable if they were free from a zest for abstract speculation. A reasonable doubt was not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense. It must grow out of the evidence in the case. [403H; 404A-B]

6. The appellant's submission that the judgment under appeal was rendered infirm on several counts could not be said to be without substance. The appeal before the High Court must, therefore, receive a reconsideration. [401B]

Qamreeddin v. Acqeel, AIR l982 SC 12 29 adopted.

JUDGMENT:

CRlMINAL APPELLATE JURISDlCTlON: Criminal Appeal No. 891 of 1985.

From the Judgment and Order dated 30.9.1983 of the Allahabad High Court in Crl. A. No. 1320 of 1982. Prithvi Raj, Dalveer Bhandari and Ms. Rachna Joshi for the Appellant.

U.R. Lalit and Shakil Ahmed Syed for the Respondents. The Judgment of the Court was delivered by VENKATACHALIAH, J. This appeal, by special leave, is by the State of Uttar Pradesh preferred against the Judgment dated 30.9.1983 of the High Court of Judicature at Allahabad setting aside the conviction and sentence passed against the two Respondent-accused in Sessions Trial No. 256 of 1981 on the file of the Sessions Judge, Bareilly, for offences under Section 302 read with Section 304, IPC. The learned Sessions Judge had handed down a sentence of imprisonment for life, but the High Court, in reversal of that conviction and sentence, acquitted the respondents.

2. The case of the prosecution may briefly stated:

PG NO 394 At 2.00 PM on 31.1.1981 in the town of Mirganj in the District Bareilly, in front of the house of a certain Lalan, the two respondents- Krishna Gopal and Vijai-who are related to each other as uncle and nephew, set-upon and attacked Harish, S/o Mihilal, with knives causing serious injuries to which Harish succumbed at 6.40 PM the same day at the District Hospital, Bareilly, to which he was removed after the incident. The incident was witnessed by Omkar (PW 1), Khiali Ram (PW 2) who saw the attack from a close distance of about 20 paces and on account of whose protestations the accused persons hastened away from the scene, one of them leaving behind the

knife used in the attack; Paranvir (PW 6) came on the spot soon thereafter and wrote the First Information Report (Ex. Ka. 1) at the scene as per instructions of injured Harish who signed it. Thereafter, Harish was taken to Mirganj Police Station which was just two furlongs away from the scene in an auto-rickshaw by Omkar (PW 1) and Mihilal, the father of Harish, who had also reached the spot by then. Ex. Ka. 1 was delivered at Station-house by injured Harish himself at 2.15 PM. Harish who had also brought with him one of the knives left behind by the assailants, was deposited in the Station-house under Memo (Ex. Ka. 2) prepared in that behalf. Injured-Harish signed that Memo.

Thereafter, Harish was taken to the Public Health Centre at Mirganj accompanied by a constable. The investigating officer, Nanak Chand Sharma, (PW 7) who carne to the Station-house at 2.30 PM proceeded to Mirganj Hospital and recorded Harish's statement (Ex. Ka. 7). As no doctors were available at the Public Health Centre at Mirganj, injured- Harish was taken to the District Hospital at Bareilly in a motor-vehicle. Dr. Rajeev Aggarwal (PW 3) examined Harish at about 4.40 PM and noted the injuries on the person of Harish in the list, Ex. Ka. 3. Despite treatment at the District Hospital by the Surgeon Dr. Pundani and Dr. Sharma, Harish died at 6.40 PM at the hospital.

The accused Krishna Gopal was arrested at 6.30 PM on the same day. His Kurtha (Ex. 4) and his blood-stained Paijama (Ex. 5) were recovered, under Memo Ex. Ka. 10. The accused Vijai was arrested on 8.2.1981. Accused were put-up for trial for offences under Section 302 read with Section 34, IPC. The motive for the killing was previous enmity between the accused-persons and Mihilal. the father of the deceased. The accused denied the charge and pleaded not guilty. According to the drift of the suggestions made to the prosecution witnesses at the trial and from their statements under Section 313 Cr. PC, they indicated that deceased- Harish was a gambler and had sustained injuries at about PG NO 395 3.00 PM that day in a gambling-brawl and that occasion was exploited by Paranvir (PW 6) and others to foist a false case against them owing to previous enmity. Accused Krishna- Gopal while admitting the seizure of his clothes under Ex. Ka. 10, however, denied that at the time of recovery they were blood stained.

3. At the trial, before the learned Sessions Judge, the prosecution examined and relied upon the two eye witnesses, Omkar (PW 1) and Khiali Ram (PW 2). Dr. Rajeev Aggarwal (PW

3) spoke to the injury report (Ex. Ka. 3), prepared by him. Dr. Balbir Singh (PW 5), who conducted the post-mortem examination spoke to the post-mortem report Ex. Ka. 6; Paranvir (PW 6) who was the scribe of Ex. Ka. 1, and Habib (PW 8) who had witnessed the seizure of the clothes on the person of Krishna Gopal under Ex. Ka. 10 were also called. Nanak Chand Sharma, investigating officer, tendered evidence as PW 7. Serologist's report was marked as Ex. Ka. h. The other witnesses were formal witnesses.

The prosecution relied, in the main, on the eye- witnesses and on the Ex. Ka 1 and Ex. Ka. 7 which it sought to use as dying declarations.

4. In the trial, it was urged for the defence that, having regard to the serious nature of the injuries sustained by the deceased which included a 4 cm. long slashing of the tongue and the shock and the

profuse- bleeding the injuries admittedly had caused, injured-Harish, would have lost consciousness very soon and that, at all events, even if he had retained consciousness he would not be in a position to articulate his speech. These circumstances would, it was urged, wholly improbablise, if not render altogether false, the two, dying declarations. The defence also assailed the credibility of the eye-witnesses on what, according to the defence, were the intrinsic discrepancies in the version of the two eye- witnesses who were characterised as chance and, otherwise interested, witnesses.

5. On an appraisal and assessment of the evidence on record, the learned Sessions Judge found the eye-witnesses trust-worthy and their version credible and acceptable. The learned Sessions Judge on the basis of the medical-evidence of PW 3 accepted the prosecution case that notwithstanding the somewhat serious injuries inflicted on him, Harish was in a position to instruct the preparation of Ex. Ka. 1 and to make the statement before the investigating officer as per Ex. Ka. 7. Learned Sessions Judge considered the sequence of events, that the First Information Report PG NO 396 reached the Station-house within fifteen minutes of the occurrence; that injured was physically present at the station which the learned Judge considered undisputable having regard to the signature on Ex. Ka. 10 and that the circumstance that one of eye-witnesses, (PW 1) had accompanied the injured to the police station within a few minutes of the occurrence, suggested his presence at the scene, had established the prosecution case against the accused persons beyond reasonable doubt. The accused were, accordingly, convicted and sentenced.

6. In the appeal by the convicted persons, the High Court on a re-assessment of the entire evidence persuaded itself to the view that having regard to the nature and severity of the injuries, Harish could not reasonably be expected to have been in a position to make the dying- declarations attributed to him; that the discrepancies in the evidence of the eye-witnesses rendered them unsafe to be relied upon and that with the rejection of the dying- declarations and the eye-witness-account, nothing remained which would connect the accused persons with the crime. The High Court, accordingly, allowed the appeal and acquitted the accused.

The State has challenged the acquittal as one arrived at as much by a basically erroneous approach to the matter as by a non-consideration of material evidence on record, resulting in a serious miscarriage of justice.

7. Shri Prithviraj learned senior Counsel for the State submitted that in discarding the two dying declarations (Ex. Ka. I & Ex. Ka. 7), the High Court fell into a serious error in its assumptive predication that the injuries on the person of Harish were such as were likely to render him unconscious immediately and incapacitate him from making the dying declarations attributed to him. In posting this, the High Court, contends counsel, ignored the positive and firm opinion of Dr. Rajeev Aggarwal (PW 3), who had had the opportunity of examining the injured person at 4.40 PM that very day, that "the deceased could survive and speak for an hour after being injured." Learned Counsel submitted that the High Court, quite erroneously, preferred a hypothetical answer of the doctor as to the mere theoretical possibility implicit in his later answer that "in view of the injuries (1) and (3) it is likely that the deceased might not have been able to speak" to the certainty of the first answer. Learned Counsel also sought to point out that the evidence of PW 5, Dr. Balbir Singh, who conducted the post-mortem did not also support the speculation that the injured would have

PG NO 397 lost consciousness immediately after the injury. Learned Counsel also listed what, according to him, were certain important circumstances which compelled an irresistable inference as to the presence of Harish at the Station-house in an injured condition within a few minutes of the attack. Shri Prithviraj submitted that certain important pieces of evidence were mis-read by the High Court which led to serious errors and to the consequent miscarriage of justice. Sri Prithviraj submitted that where, as here, the High Court reverses a conviction on conjectures and not on sound reasoning, this Court should interfere. An unjust acquittal he said, was as much a miscarriage of justice as an unjust conviction was. Sri Prithviraj further submitted that the version of the eye-witnesses as to the time of the attack was, indeed, corroborated by Medical-evidence and the information having been lodged with the police within 15 minutes of the occurrence, there was absolutely no scope for any deliberation and concoction. That apart, injured-Harish or his well-wishers had no reason to shield the identity of the real culprits and implicate innocent persons.

8. Shri U.R. Lalit, learned Senior Counsel for the respondents, endeavoured to show that this was not a fit and appropriate case for interference by this Court and that if the High Court, after consideration of the whole evidence, came to a conclusion which cannot be said to be unsupportable on the evidence, this Court should not interfere under Article 136, even if two views were possible on the evidence and the one in favour of the prosecution could be reached on re-appreciation of the evidence, as long as the view opted for and that commended itself to the High Court could not be said to be altogether impossible on the evidence. Shri Lalit invited attention to certain answers of the Medical-experts that enabled an inference that the injuries were such as were likely to render the victim immediately unconscious or at least inarticulate and urged that if in view of the injuries of a grave nature and the profuse bleeding suffered by the injured, the High Court considered it probable that the injured might have lost consciousness after the attack so as to improbablise the dying declarations and that, at all events, if, having regard to the very serious slashing of the tongue, which, according to the medical-evidence could in itself, in the ordinary course have caused death. the High Court considered it likely or probable that the injured would not be able to speak, there was nothing in that view which would invite or justify interference by this Court under Article 136. The principle of penal policy would, says counsel, require that this Court should decline to interfere.

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9. It is, no doubt, true that as a self-made rule of practice, this Court does not interfere with the findings of fact reached by the High Court, but such findings of facts must not be vitiated by serious errors. In State of U.P. v. Jashoda Nandan Gupta & Ors., AIR 1974 SC 753 (757) observed:

".....as a self-made rule of practice, this Court does not interfere with the findings of fact reached by the High Court, unless exceptional and grave circumstances exist, or forms of legal process have been disregarded or otherwise there has been a gross miscarriage of justice. Where the judgment which is the subject of appeal under that Article, is one of acquittal, this Court will not interfere with the same in the exercise of its overriding jurisdiction unless that judgment is clearly unreasonable, or perverse or manifestly illegal or grossly unjust. Therefore, if in the nicely balancing probabilities of a case, two views of the evidence- one indicating acquittal and the other conviction- were reasonably possible, this Court would not disturb the High Court's order of acquittal."

In State of Punjab v. Sucha Singh & Ors., [1974] AIR SC 343 (344) this Court said:

"..... In our opinion, it was for the High Court to appraise the evidence which was adduced in this case. In the absence of any infirmity in the appraisement of the evidence by the High Court, we find no cogent grounds to reappraise the evidence. The fact that on the evidence adduced, a different view could also have been taken in the matter, would not induce us to interfere with the judgment of the High Court. The appeal fails and is dismissed."

In State of A.P. v. P. Anjaneyulu, AIR 1982 SC 1598 (1599) it was held:

".....The question is one of appreciation of evidence and the proposed appeal does not raise any substantial question of law. Apart from that we do not ordinarily entertain appeals against orders of acquittal if two views of the evidence are possible ....."

In State of U.P. v. Pussu, SCR 1983 (3) 294 (309) this Court observed:

PG NO 399 " .... We are aware of the rule of practice that ordinarily this Court should not interfere with judgments of acquittaI of a mere reappreciation of evidence. But if these are glaring infirmities in the judgment of the High Court resulting in a gross miscarriage of justice, it is the duty of this Court to interfere. In the instant case we find that the approach of the High Court is basically erroneous and its judgment is founded on false assumptions, conjectures and surmises . . . .

But these pronouncements themselves qualify this rule of self-abnegation prescribed for itself by this Court, with the qualification that where serious errors of assumption and inference vitiate the finding, interference is justified. In matters such as this, it is appropriate to the observations of this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, [1974] 1 SCR 489 (492-93) :

" . . . . . The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web our our law should not be stretched morbidly to embrace every hunch, hestiancy and degree of doubt .....

" . . . . . The evil of acquitting a guilty person light-heartedly as a learned author Glanville Williams; in 'Proof of Guilt' has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general. they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless . . . . ."

"a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....."

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10. Shri Lalit, however, said that the accepted principles of criminal jurisprudence, and administration of criminal justice require that an appellate Court should refrain from reversing an acquittal except for "very substantial" and "compelling" reasons. Learned counsel submitted that if after a discussion of the evidence and on a consideration of probabilities, the High Court considers that so serious a charge as of a capital offence cannot safely be sustained on the evidence there is not only nothing inherently erroneous in it but the omission to make such an approach on the appraisal of criminal evidence is itself violative of accepted rules of administration of criminal justice whose twin principles are the presumption of innocence and the burden of proof on the prosecution to establish a criminal charge by standards of evidence appropriate to criminal actions, beyond reasonable doubt. But the submissions of Sri Lalit bearing on the limitations of the appellate Court under the supposed rule that unless there are "substantial" or "compelling" reasons or "very substantial reasons" or "strong reasons", the findings in a judgment of acquittal should not be interfered with should not pass without some comment. This Court in dealing with the scope of the powers of the appellate Court in appeals against the acquittal has, by and large, approved and accepted the lucid formulation of the law by the judicial committee in Sheo Swarup's case, (61 Indian Appeals

399) as clarified later by the judicial committee in Noor Mohammad's case (AlR 1945 PC 151). Those principles, as we understand them, do not detract from the plenitude of the power of the appellate Court to review and reappreciate the evidence if the order of acquittal on a review of the evidence is found to be grossly erroneous. The powers of the appellate Court, in an appeal against the acquittal, are not different from or inconsistent with. those that the appellate Court has in an appeal against a conviction; the difference is, as is sometimes stated, more in the manner of approach and the perspective rather than in the content of the power. The expressions "very substantial reasons", "substantial and compelling reasons". "strong reasons" used in several pronouncements which tend to qualify the power of the appellate Court do no more than to convey the principles stated by the judicial committee in Sheo Swarup's case (See: Sanwat Singh v. State of Rajasthan, AIR 1986 SC 715; Chandra kanta Debnath v. State of Tripura, AIR 1985 SC

606). There is, thus no immunity to an erroneous-order from a strict appellate scrutiny. But the appellate Court wherever if finds justification to reverse an acquittal must record reasons why it finds the lower court wrong. This, in the ultimate analysis, is merely a reiteration of a PG NO 401 principle which every exercise of appellate jurisdiction in the matter of reversal of an order under appeal is subject to.

11. In the present case, the submissions of Sri Prithviraj that the judgment under appeal is rendered infirm on several counts cannot be said to be without substance. We, however, abstain from a review of the evidence ourselves to test whether the inferences drawn by the High Court are justified or not as, in our view, the appeal before the High Court must receive a reconsideration. Any comment by us might pre-judge aspects which require consideration by the High Court.

But it would not be inappropriate to refer to the submissions of Sri Prithviraj as to some aspects of the evidence in the case. The High Court for instance did not advert to the evidentiary value and effect of Ex. Ka. 2, relating to the deposit of the knife at the Station-house by the deceased-Harish which was said to contain Harish's signature. The High Court did not consider either the genuineness of Ex. Ka. 2 and of the signature of Harish thereon and if Ex. Ka. 3 was genuine, what inferences would follow on the cognate question as to how long Harish was conscious after the attack. The High Court, Sri Prithviraj points out, did not consider the evidence of the investigating officer (PW 7) on certain important aspects. As an instance of mis-reading of the evidence by the High Court, Shri Prithviraj pointed out the error in the assumption made by the High Court that according to Paranvir (PW 6), injured-Harish had merely indicated by signs or gestures that he was injured by the knife which was seen at the scene of occurrence as a circumstance bearing on the question whether Harish's speech had been affected. The High Court referred to the evidence of PW 6 on this point and observed:

". . . . . At one place he said that Harish has made a sign indicating that he was injured with the knife which was found on the scene of occurrence . . . ."

This, according to Sri Prithviraj. weighed with the High Court in reaching such erroneous conclusions as it did in regard to the ability of the deceased Harish to speak immediately after the injuries-a circumstance which had a material bearing on the genuineness of the declarations. Sri Prithviraj pointed out that the evidence on the point was misread by the High Court and that evidence clearly indicated that Harish did not merely gesture, but did also speak. Indeed, this appears to be so. PW 6 had stated:

PG NO 402 " .. . ... This knife was found at the spot. He had indicated towards that knife saying that he was attacked with this knife ..."

12. Sri Prithviraj pointed out certain circumstances which stand established with a degree of probability appropriate to the requisite criminal evidential standard viz., that Harish had died a homicidal death attributable to the injuries caused by a weapon of the kind of Ex. 1; that the attack had occurred at the place and time alleged by the prosecution ; that Harish in the injured condition went to the Station-house at 2. 15 PM along with Omkar (PW 1) and lodged Ex. Ka. 2 and that Ex. Ka. 3 evidencing the deposit of the knife was also signed by Harish at the Station-house. The High Court, according to Sri Prithviraj. had not given due recognition to these facts which were clearly established and the inevitable consequences logically flowing there-from. It was urged that the High Court did not also displace the important reasons given by the trial court in accepting these circumstances.

In regard to Shri Prithviraj's point that the evidence of the investigating-officer did not receive independent appraisal it is relevant to recall what was said in State of Kerala v. M. M. Mathew & Anr, though in a somewhat different context:

"..... It is true that courts of law have to judge the evidence before them by applying the well recognised test of basic human probabilities....."

"..... prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case....."

l3. There might also be some justification for the grievance of the appellant that the High Court had preferred some observations in the medical-evidence-which Sri Prithviraj characterised as merely conjectural answers-to the other categoric answer by the very medical-witnesses themselves. So Prithviraj also submitted that if would be erroneous to accord undue primacy to the hypothetical answers of medical-witnesses to exclude the eye-witnesses' account which had to be rested independently and not treated as the "variable" keeping the medical-evidence as the "constant".

PG NO 403 It is trite that where the eye-witnesses' account is found credible and trustworthy, medical-opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the orality of the trial-process. Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical-evidence, as the sole touch-stone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts; the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amount to `proof' is an exercise particular to each case. Referring to the inter-dependence of evidence and the confirmation of one piece of evidence by another a learned author says: (See: "The Mathematics of Proof-II": Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342).

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited art with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to inter guilt from the fact that the dependant fled from justice. But since it is generally guilty rather than innocent people who run away, the two doubt are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be reasonable if they are free from a seat for abstract speculation. taw cannot afford any favourite other than truth. To consitute reasonable doubt, it is must PG NO 404 be free from an over emotional response. Doubts may be actual and substantial doubts as to the guilt of the accused-person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair

doubt based upon reason and common-sense. lt must grow out of the evidence in the case. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective-element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common-sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused-persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.

14. In the circumstances of the case, we propose to adopt the course which commended itself to the Court in Qamruddin v. Acqeel & Ors., AIR 1982 SC 1229 where Fazal Ali J. observed:

"The trial court had convicted the accused on a full and complete appraisal-of the evidence. The High Court in appeal has written a very cryptic judgment and has not tried to displace some of the important reasons given by the trial court nor has it made any attempt to scan the intrinsic merits of the evidence. We are satisfied that the judgment of the High Court is not in accordance: with law. In these circumstances, therefore, we allow this appeal and remand the case to the High Court for fresh disposal according to law ....."

15. Accordingly this appeal is partly allowed, the Judgment of the High Court dated 30th September, 1983, in Crl. Appeal No. 1320 of 1982 is set aside and the appeal is remitted to the High Court with the direction to re-admit it, and hear and dispose of the same on the merits afresh. We hope and trust that it will be possible for the High Court to dispose of the appeal most expeditiously. The High Court, should it consider it necessary or appropriate, might consider calling for expert medical-

PG NO 405 evidence- of course with appropriate opportunity to the defence'-on the point of the effect of the injuries on the speech and consciousness of Harish. This is of entirely left to the High Court.

16. During the pendency of the appeal before the High Court pursuant to this order, the respondents shall be enlarged on bail to the satisfaction of the Sessions Court, Bareilly. Appeal is disposed of accordingly.

R.S.S. Appeal allowed partly.