

## Sudershan Kumar vs State Of H.P on 18 December, 2014

**Equivalent citations:** 2015 AIR SCW 1180, (2015) 147 ALLINDCAS 208 (SC), AIR 2015 SC (CRIMINAL) 611, (2015) 1 CURCRIR 112, 2014 (15) SCC 666, (2015) 1 DLT(CRL) 1, (2015) 1 RECCRIR 496, (2014) 14 SCALE 276, (2015) 2 JLJR 19, (2015) 88 ALLCRIC 956, (2015) 1 ALLCRIR 953, (2015) 60 OCR 419, 2015 CALCRILR 2 437, (2015) 1 ALLCRILR 951, 2015 (2) KCCR SN 155 (SC)

**Author:** A.K. Sikri

**Bench:** A.K. Sikri, J. Chelameswar

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1403 OF 2011

SUDERSHAN KUMAR	. . . . . APPELLANT(S)	
VERSUS		
STATE OF HIMACHAL PRADESH	. . . . . RESPONDENT(S)	

W I T H

CRIMINAL APPEAL NO. 1404 OF 2011  
CRIMINAL APPEAL NOS. 1445-1446 OF 2011

A N D

CRIMINAL APPEAL NOS. 1447-1448 OF 2011

J U D G M E N T

A.K. SIKRI, J.

These appeals arise out of common judgment dated May 03, 2011 rendered by the High Court of Himachal Pradesh. The appellants in these appeals were charge-sheeted and tried for offences punishable under Sections 120-B, 409, 218 and 420 of the Indian Penal Code, 1860 (for short, 'IPC') as well as Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'PC Act'). They were arrayed as accused 1 to 4 (A-1 to A-4). After the trial, the learned Special Judge, Solan, acquitted all the four appellants of the aforesaid charges, inasmuch as, as per his findings, the charges were not proved against these appellants beyond reasonable doubt. The respondent-State went in appeal challenging the aforesaid verdict of the Special Judge. The High Court, by impugned order, has upturned the decision of the Special Judge holding all the four appellants as guilty of various offences under IPC as well as the PC Act and convicted them as follows:

|Accused No./Appeal No.|Name |Designation and Charges | |Accused No.1  
|Sudershan Kumar |In-charge of Himachal | |Crl.A. No. 1430/2011 | |Pradesh State  
Civil | | |Supplies, Chambaghat | | | | |1) Under Section 120-B read | | |with  
Sections 409 and 218 | | |IPC and Section 13(2) of the| | |Prevention of Corruption  
Act| | | | | |(SI for one year and fine of| | |?10,000/- with default for 3| | |  
|months) | | | | | |2) 409 IPC - SI for two | | |years and fine of ?30,000/-,| | |  
|default SI for 6 months | | | | | |3) 218 IPC - SI for six | | |months and fine of  
?5,000/-,| | |default SI one month | | | | |4) 13(2) PC Act - SI for | | |one year  
and fine of | | |?20,000/- with default SI | | |three months | |Accused No.2  
|Ramesh Chand |Helper with Himachal Pradesh| |Crl.A. No. 1404/2011 | |State Civil  
Supplies, | | |Chambaghat | | | | |1) Under Section 120-B read | | |with  
Sections 409 and 218 | | |IPC and Section 13(2) of the| | |Prevention of Corruption  
Act| | | | | |(SI for one year and fine of| | |?10,000/- with default for 3| | |  
|months) | | | | | |2) 409 IPC - SI for two | | |years and fine of ?30,000/-,| | |  
|default SI for 6 months | | | | | |3) 218 IPC - SI for six | | |months and fine of  
?5,000/-,| | |default SI one month | | | | |4) 13(2) PC Act - SI for | | |one year  
and fine of | | |?20,000/- with default SI | | |three months | |Accused No.3 |Pawan  
Kumar |Owner/Proprietor of the | |Crl.A. Nos. |Sahni |Flour Mill (Giri Raj Atta |  
|1447-1448/2011 | |Mill) | | | | |Under Section 120-B read | | |with Sections 409  
and 218 | | |IPC and Section 13(2) of the| | |Prevention of Corruption Act| | | | |  
|(RI for one year and fine of| | |?20,000/- with default SI 3 | | |months) | |Accused  
No.4 |Ramesh Chand-II |Munshi of Pawan Kumar Sahni | |Crl.A. Nos. | | |  
|1445-1446/2011 | |Under Section 120-B read | | |with Sections 409 and 218 | | |  
|IPC and Section 13(2) of the| | |Prevention of Corruption Act| | | | | |(RI for one  
year and fine of| | |?20,000/- with default SI 3 | | |months) | |Special leave to  
appeal was granted by this Court on July 18, 2011 and July 22, 2011 respectively in  
the petitions filed by the appellants. By the same orders, this Court suspended the  
sentence of the appellants on certain terms. The appellants are, accordingly, on bail.

The factual matrix which led to the charge of these appellants, is succinctly narrated by the High Court with due clarity and, therefore, we are taking the facts from the said judgment, which led to the trial of these appellants.

Appellant No.1 Sudershan Kumar (hereinafter referred to as 'A-1') was working as In-charge of Himachal Pradesh State Civil Supplies Corporation, Chambaghat (hereinafter referred to as the 'Corporation'), a suburb of Solan town. Appellant No.2 Ramesh Chand, s/o. Bhagwan Singh (hereinafter referred to as 'A-2'), was working as Helper in the aforesaid Corporation in the month of May 2003. Appellant No.3 Pawan Kumar Sahni (hereinafter referred to as 'A-3') is the proprietor of flour mill, known as Giri Raj Atta Mill, at Deonghat, another suburb of Solan town. Appellant No.4 Ramesh Chand-II, s/o. Sher Bahadur (hereinafter referred to as 'A-4') was employed as Munshi by A-3 for assisting him in the affairs of the aforesaid flour mill.

Prosecution case is that on May 30, 2003, Shri Hari Chand (PW-14), Deputy Superintendent of Police (Vigilance), received secret information that a truck was being loaded with wheat bags at the Corporation's Depot at Chambaghat and that the wheat was to be carried to the flour mill of A-3 in an illegal and unauthorized manner. The wheat was, in fact, meant for distribution to the persons living below poverty line and it could not have been sold to anybody else. PW-14 deputed Sub Inspector Shri Bheem Singh (PW-11) to verify the information received by him. PW-11 then went to Chambaghat and found that wheat was being loaded in Truck No. HP-14-6189. He returned to the office of PW-14 at Solan and informed him about what he had seen.

Soon, Truck No. HP-14-6189 appeared on the National Highway from the side of store of Corporation at Chambaghat. It was followed by PW-14 in a Government Gypsy. He was accompanied by PW-11 and some other police officials. Truck crossed Solan town and proceeded towards Deonghat. It stopped behind two trucks which were already parked near the flour mill of A-3. PW-14, accompanied by PW-11 and other police officials, debarked their vehicle and went to the site where the truck had been stopped. Driver of the truck, namely Shri Duni Chand (PW-2), was in driver's seat. A-4 was in the driver's cabin. There were no papers regarding transportation of wheat available with the driver. On enquiry, the driver told that the wheat had been loaded at the instance of A-4 who claimed that the papers were with him. Wheat bags loaded in the truck were counted and they were 130 in number.

A written report was prepared, which is marked Exhibit PW-10/L and sent to the Police Station for formal registration of the case. Case was formally registered vide FIR Exhibit PW-10/M. Driver of the truck, i.e. PW-2, and A-4 were taken into custody. Truck loaded with 130 bags of wheat was seized and taken to the police station. A-1 and A-2 were also taken into custody.

On May 31, 2003, or say the next following day, Gate Pass Book (Exhibit PW-6/A-6) was taken into possession. It had a carbon copy of Gate Pass dated May 30, 2003 as per which 130 bags of wheat had been loaded in Truck No. HP-14-0198 for being carried to Arki. This is the last Gate Pass in the Book. Carbon copy of the Gate Pass available in the Book is marked as Exhibit PW-9/A. During verification, the Police found that HP-14-0198 is the registration number of a Scooter and not a Truck or mini Truck.

During the course of investigation, specimen writings of A-1 and A-2 were also taken. Their admitted writings/signatures were also seized. Specimen and admitted writings/signatures of these appellants were sent to the handwriting expert Dr. Minakshi Mahajan (PW-9) for comparison. She opined that the signatures Mark Q-3 on Gate Pass (Exhibit PW-9/A) was similar to the standard signatures of A-1 and the body of the Gate Pass Mark Q-1 tallied with the standard writings of A-2.

On completion of investigation and after obtaining sanction to prosecute A-1 and A-2, a report under Section 173 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), along with relevant

papers, was filed in the Court of Special Judge, who, after complying with the requirement of Section 207 of Cr.P.C., and hearing the Public Prosecutor and defence counsel and after perusing the record, charged A-1 and A-2 with offences punishable under Sections 120-B, 408, 218 of IPC and Section 13(2) of the PC Act. A-3 and A-4 were charged with offences under Sections 120-B and 420 of the IPC.

During examination of the appellants under Section 313 of the Cr.P.C., A-1 in his statement had denied supplying of 130 wheat bags to flour mill of A-

3. However, he has stated that these bags had been loaded in the truck for transportation to Arki depot from where the demand had been received. He denied A-4 having come to the godown. However, he admitted sealing of the store by the police, taking of the gate pass and stock register into possession, handing over 130 bags of wheat to the Regional Manager on superdari, keeping two empty bags as sample, handing over the keys of the store to Anil Kumar, and taking into possession the appointment and posting orders. He also admitted taking of their specimen handwriting. Information supplied by the Registering and Licensing Authority, Solan with regard to Vehicle No. HP-14-0198 as Scooter has been admitted. It is admitted that no wheat grains had been received at Arki depot and PW-3 had loaded 130 bags of wheat from the godown in vehicle Swaraj Mazda from another truck at his instance. It is admitted that the gate passes were issued by them and denied the sending of documents to the Examiner of Documents. However, it was stated by A-1 that the truck number was written on the challan on the information of Palledar and so bona fide mistake had crept in filling the number. The bags were meant to be taken to Arki depot. Similar is the statement of A-2.

A-3 and A-4 have also denied the correctness of the prosecution evidence. A-3 stated that A-4 was employed as peon-cum-water carrier. He had also denied keeping any attendance register and making over writing. It was stated that there was no reason for them to erase the original entry and if they wanted they could have prepared and produced a new register to the Police. He claimed to be innocent. Statement of A-4 was also claiming to be innocent. As far as the evidence regarding hiring trucks from open market and issuing of instructions to hire trucks from the Union, the appellants admitted it to be correct, but stated that they had been hiring trucks from market. He further stated that the practice of hiring trucks from open market had been found correct. About hiring of the trucks of private owners, he has stated that they used to give demand on phone but when the Union did not send trucks of required number, then truck was called from Mr. Kapila.

A-1 had examined two witnesses: DW-1 Ram Pal, Public Distribution Clerk in Food and Supply depot at Chambaghat, to prove that food grains etc. used to supply through the truck tied from the private owners, and DW-2 Sandeep Kapila, owner of Truck No. HP-14-6189 to prove that his truck had been hired for transporting the wheat from FCI godown, Chambaghat to FCI Arki depot. As per him, the driver had come to Deonghat for obtaining money for diesel and other expenses. The driver got the wheels of the truck checked and put new tyres. After having test drive, the wheels again got jammed and the driver left the vehicle by road side and came to him and told about the same. In the meantime, some people came there in civil dress and asked the driver to accompany them to the place where the truck was parked and there were police people surrounding the truck.

Judgment of the Trial Court After hearing the arguments of the counsel for the parties and analyzing the evidence which surfaced on record, the Special Judge believed the defence version and held that prosecution could not prove the case beyond reasonable doubt. While arriving at this conclusion, the learned trial court pointed out certain loopholes in the investigation as well as the evidence of the prosecution and also observed the areas where the prosecution lacked in furnishing sufficient evidence which could nail the appellants. Discarding the case of the prosecution that the accused persons were caught red-handed, the trial court pointed out that the truck was not actually taken to the premises of the factory of A-3. It was still by the side of the main road when the truck was intercepted. The Special Judge was of the opinion that the police party should have waited to find out whether the truck will be taken to the factory and goods would be unloaded.

The judgment of the trial court further reveals that the learned Judge formulated the following points which had arisen for determination in this case:

"(1) Whether the accused Sudershan Kumar and Ramesh Chand have entered into a conspiracy with accused Pawan Kumar and Ramesh Munshi to sell the wheat bags from the Civil Supply Food Corporation, Chambaghat to the Flour mill at Deonghat?

(2) Whether the accused Sudershan Kumar and Ramesh Chand sold the Government wheat to the accused Pawan Sahni illegally and these are guilty of criminal misconduct?

(3) Whether accused Pawan Kumar and Ramesh Munshi had obtained delivery of the wheat bags by dishonest inducement?

(4) Final order."

Having regard to the facts that the aforesaid questions are interconnected, the Special Judge took them up together for discussion. For determination of these points, the Court analyzed the prosecution evidence by pointing out that as per the version of the police, they had followed the truck from Chambaghat and the truck had stopped in front of the flour mill of A-3. The police party following the truck called the local police and searched the truck. PW-2 and A-4 were sitting in the truck. Arun Kumar, who was the cleaner of the truck, had not been examined. The trial court found that this part of the prosecution case was not supported by PW-2 and, therefore, it raised grave doubt about the correctness of the prosecution version. It is highlighted by the Special Judge that this witness has categorically stated that after he parked the truck in front of the factory, he came to take tea and when he came back to the vehicle, the police had reached there. It was clear from this statement that he was not inside the truck when the police searched the truck. He also did not state that A-4 or Arun Kumar, cleaner of the truck, were inside the truck when the police intercepted it. The trial court also pointed out certain circumstances from which it came to the conclusion that evidence of PW-2 was not reliable. The specific observations on his testimony, highlighting this aspect, are in the following words:

"22. Apart from above facts, the evidence of PW-2 is not reliable. He appears to be a witness with a view to save himself from the case as earlier he had also been arrested by the police. His bail application has been opposed and later on he has been cited as a witness. In his statement he states about leaving one boy in the truck who was said to be son of driver. As per his cross-examination, he took 10-15 minutes for him to take tea. The police had arrived on the spot before his return to the truck. He did not tell the police that he had gone to take tea after parking the truck. It takes 5-6 minutes to reach Deonghat from Dohri Dewar. He admitted that when he came there after taking tea, police was in the parking area of hotel Shefiton and he was arrested by the police the read (sic) before he could reach his truck. He also does not know where the son of driver had gone whether he was inside the truck or outside. He admitted that he was asked by the police to take the truck to the police station and accused Ramesh Munshi was not inside the truck and came to the police station in a car and he was also arrested when he reached the police station. The witness has however denied the suggestion that the accused Ramesh Munshi had not come with him.

23. As would be seen, the evidence of PW-2 is full of doubtful features. Therefore, on reliance can be placed on such a witness too. He cannot be relied upon and believed in parts. His evidence has to be either accepted in toto or rejected in toto. His evidence is as such part of which cannot be accepted. It would be highly unsafe to place reliance on him and it would be equally unjustified to believe the portion which goes in favour of prosecution and if believe goes against it (sic). Therefore, the safest course is to discard his evidence in its entirety."

The trial court also observed that as per the prosecution it is A-4, munshi employed by A-3, is the person who links the supply of the wheat to the flour mill of A-4. However, if his presence is excluded, as it was not substantiated by cogent evidence, then there is no evidence to link A-4 with the sale of wheat bags to him as the wheat bags to his flour mill had not been transported from the truck as, when the police had caught the truck, the truck was not standing in front of the flour mill of A-4. On the contrary, it was parked on the road side, away from the flour mill of A- 4, which was clearly revealed from the photographs taken by the police. There was even an admission on the part of PW-2 in his cross-examination that A-4 had come in his own car.

Commenting upon the unusual anxiety shown by the police in seizing the truck in a hurry without waiting for the unloading of the truck, the trial court observed that such a conduct of the police was neither understandable nor satisfactorily explained. The Special Judge remarked that if the wheat had been sold or was to be supplied to A-4, which was purportedly the information received by the police, then the police should have waited for unloading of the bags and carrying of these bags to the flour mill of A-4. In that event, they could have caught the accused persons red-handed. As it was not done, it raised grave doubt about the actual happening and genuineness of the prosecution case. The trial court also found lack of evidence of conspiracy between the accused persons as it was not proved that all the accused had joint/separate meetings and had conspired together to do the acts as alleged.

The aforesaid, in brief, are the reasons which prompted the Special Judge to acquit the appellants.

Judgment of the High Court The material discussion in the judgment of the High Court starts with taking note of the admitted facts, namely: (i) the wheat was loaded in the truck in question; (ii) when it was intercepted and its driver PW-2 was taken into custody, he did not have the gate pass with him. The carbon copy of the gate pass was made available to the investigating agency by A-1 on the next date; (iii) the said copy was from the gate pass book (Exhibit PW-6/A-6) and carbon copy was Exhibit PW-9/A. On the gate pass, number of the vehicle written was HP-14-0198, which was not the registration number of the vehicle in which 130 bags of wheat had been loaded. Prosecution had proved that Registration No. HP-14-0198 was of a scooter and not of any truck; and (iv) gate pass (Exhibit PW-9/A) is the last pass of the date May 30, 2003 from which it was proved beyond reasonable doubt that the said gate pass was prepared subsequently to cook up defence plea that the wheat was being consigned to a depot at Arki.

The High Court observed that it was for the defence to prove that the wheat had been dispatched to a depot at Arki, but they failed to do so. The High Court discarded as unworthy of trust the testimony of DW-2, Sandeep Kumar, owner of Truck No. HP-14-6189, in which the wheat bags were loaded for carrying to Arki. It is also observed that the log book of the said vehicle had not been filled in after October 10, 2002 and there was no explanation given for the same. On the other hand, the High Court has acted upon the testimony of PW-2, driver of the truck.

In nutshell, the two factors which weighed with the High Court are the discrepancy in the gate pass inasmuch as number of the vehicle shown therein was wrong and there is no satisfactory record to prove that the consignment was meant for Arki depot.

Mr. Amarendra Sharan, learned senior counsel, appeared for A-1 and A-2. Mr. Sidharth Luthra, learned senior counsel, appeared on behalf of A-3 and Mr. Dushyant Dave, learned senior counsel, argued the matter on behalf of A-

4. Mr. Suryanarayana Singh, Additional Advocate General, appeared on behalf of the State, and rebutted the submissions made by the learned senior counsel appearing for the appellants.

It may not be necessary to reproduce in detail the submissions of the counsel on either side for the simple reason that endeavour of the appellants was to refer to the defence version, which was accepted by the trial court and pointing out those portions of the judgment whereby the trial court held that prosecution had not successfully proved the charges beyond reasonable doubt with the aid of testimony of the relevant witnesses. On the other hand, learned counsel appearing for the State, extensively referred to the judgment of the High Court while making his submission that the said judgment rightly analyzed the evidence, which did not call for any interference.

Insofar as the two judgments taking contrary view, namely, that of the trial court as well as the High Court are concerned, we have already stated in detail the factors which influenced these courts to arrive at conflicting conclusions. After giving our serious consideration to the submissions of the learned counsel on both sides, examining the judgments of the lower courts and the relevant portion

of the testimonies of the witnesses which have been discussed and analyzed by the courts below, we are of the opinion that it was a case where the trial court had rightly concluded that prosecution had not been unable to prove its case beyond reasonable doubt.

No doubt, it is an accepted fact that the truck which was intercepted by the police carried 130 bags of wheat. Also, at the time when it was intercepted, PW-2 (driver of the truck) did not have gate pass with him and the carbon copy of this gate pass was produced on the next date and the number of the vehicle written on this gate pass was different. However, it is also not in doubt that the truck was not intercepted inside the flour mill of A-3, but it was at a distance from the said flour mill and was on the right side on the national highway. The moot question is as to whether from these facts, coupled with the deposition of PW-2, can it be said that offences for which these appellants were charged, have been proved beyond reasonable doubt. Here, we find that the trial court has given very cogent reasons in arriving at a conclusion that the prosecution has failed on this ground. The trial court is right in its observation as to why the truck was intercepted when it was still parked on the right side of the national highway and was not taken inside the flour mill of A-3. If there was a cogent and reliable information that the material in the truck is to be illegally and unauthorisedly sold to A-4, the police party could have easily waited for the truck to enter the premises of the flour mill and caught the culprits red-handed at the time when these bags were supposed to be unloaded. It has also come on record that PW-2, after parking the truck on the right side of the national highway, had gone to the nearby tea stall to take tea, which is routinely done by such truck drivers. The prosecution has not been able to prove that at the time when the truck was intercepted, A-2 (helper) as well as Arun Kumar (cleaner) were inside the truck. The trial court has also given convincing reasons, which have already been reproduced above, to disbelieve the testimony of PW-2 and it appears to be correct in making pertinent observations that being the driver he gave the statement to save his own skin. The High Court, on the other hand, when discussing the contradictions in the testimony of PW-2, as pointed out by the trial court, has relied upon on his testimony to nail the appellants.

Insofar as infirmity pointed out by the High Court on the gate pass is concerned, it would be relevant to point out that this very aspect has been considered by the trial court in the following words:

"24...The record of the godown, excepting of the wrong number mentioned on the gate pass, shows transportation of the wheat to Arki which fact is also probalised through the defence evidence of PW-2. No doubt wrong number has been mentioned on the gate pass which was found to be that of a scooter. But this by itself would not prove anything. The explanation given by the learned public prosecutor does seem to be correct that the record had been manipulated by the officials afterwards. Then there was no reason for them to mention the number of the scooter as by that time the truck had been caught by the police.

25. In order to attract the provisions of Section 218 I.P.C., it has to be proved that accused have prepared an incorrect record knowingly with intent to cause loss or injury to the public or to any person, or with intent thereby to save any person from legal punishment or with intent to save or knowing that they would thereby save any



property from forfeiture or other charge."

Though the High Court has remarked that the gate pass as 'proved to have been prepared subsequently to create false defence plea', there is no evidence to corroborate this observation.

The aforesaid discussion about gate pass may be probable. In any case, that by itself could not have been the circumstance or conclusive evidence to convict the appellants holding them guilty of the offences for which they were charged. Insofar as charge under Section 218 IPC is concerned, the aforesaid discussion of the trial court appears to be correct and that has not been dealt with by the High Court in the impugned judgment at all. A-1 and A-2 were charged for offence under Section 409 IPC as well. However, the same cannot be held as established as the property has not been found to have been misappropriated and used by these accused persons. On the other hand, it has been shown to be transported to Arki depot. Such an offence could not have been complete only if the accused persons had succeeded in selling it to the flour mill of A-4. However, as mentioned above, the truck never entered the flour mill and there was no act of unloading the bags in the said flour mill. On the other hand, it was seized when it was parked on the highway and, thus, no such presumption or assumption can be drawn that the bags had been sold or supplied to the flour mill of A-4 and were not intended to be carried to the depot at Arki. For the same reasons, charge of cheating also cannot be held to be proved. Insofar as charge of conspiracy is concerned, there is a total lack of any evidence to prove this charge.

Though the High Court has observed that defence has not been able to show that the goods loaded in the truck were meant for Arki depot, these observations are contrary to record. PW-3, Karam Chand, who was working with the Corporation, has categorically deposed to this effect that A-1 had told him to load the wheat bags as they were to go to Arki and PW-13, Anil Kumar Gupta, Junior Assistant with the Corporation, who took charge of the godown from A-1, stated that as per the stock register, 130 bags of wheat were shown to have been sent to the civil supply store at Arki. He further stated that at times they send supply in private trucks that are hired from the union.

There is another striking and significant feature in this case which cannot be lost sight of, namely, there was a delay of 77 days in recording the statements of persons under Section 161 of the Cr.P.C. No explanation, worth the name, is coming forth as to why such an abnormal delay took place and it tells a lot about the way investigation is carried out in the present case. This factor also shakes the credibility of the deposition of PW-2, who may have been led to give the statement to save his skin.

It has been stated and restated that a cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled *Dhanapal v. State by Public Prosecutor, Madras*, (2009) 10 SCC 401 is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In para 39, propositions laid down in an earlier case are taken note of as under:

"39. In *Chandrappa and Ors. 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.

Thereafter, in para 41, the Court curled out five principles and we would like to reproduce the said para hereunder:

"41. The following principles emerge from the cases above:

1. The accused is presumed to be 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.

2. The power of reviewing evidence is wide and the appellate court can re-

appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.
4. 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.
5. If two reasonable or possible 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."

Result of the aforesaid discussion is to allow these appeals and set aside the judgment of the High Court and restore that of the trial court. Ordered accordingly. Since the appellants are already on bail, their bail bonds shall stand discharged.

.....J. (J. CHELAMESWAR) .....J. (A.K. SIKRI)  
NEW DELHI;

DECEMBER 18, 2014.