Supreme Court of India
Nihal Singh And Ors vs State Of Punjab on 10 May, 1963
Equivalent citations: 1965 AIR 26, 1964 SCR (4) 5
Author: K Subbarao
Bench: Subbarao, K.

PETITIONER:
NIHAL SINGH AND ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT:
10/05/1963

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
DAYAL, RAGHUBAR
MUDHOLKAR, J.R.

CITATION:
1965 AIR 26 1964 SCR (4) 5
CITATOR INFO :
RF 1972 SC 622 (32)

ACT:
Criminal Trial-Acquittal order set aside by High Court--Appeal preferred to this Court-Procedure to be followed by this Court in hearing the appeal-Constitution of India, Art. 136.

HEADNOTE:
The appellants formed themselves into an unlawful assembly and in pursuance of their common object caused the death of two persons. They were tried under ss. 148 and 302/149 of Indian Penal Code. The trial Court acquitted them of all the charges. On appeal, the High Court, on a review of the entire evidence, set aside the order of acquittal and sentenced each of them to undergo rigorous imprisonment for life and one year respectively under the aforesaid charges. Hence this appeal.
Held, (per Subba Rao and Mudholkar JJ.) This Court has full discretion to hear an appeal under Art. 136 of the Constitution on facts and law. But this wide jurisdiction has to be regulated by the practice of this Court. There are two ways of approach to the hearing of such an appeal by this Court :

one is to go through the entire evidence and then come to a conclusion whether the High Court has infringed the principles laid down in Sanwat Singh's case or whether the appeal is an exceptional one which calls for the interference of this Court in the interest of justice. The other and more convenient method is to allow the counsel to state the case broadly and, after going through the judgments of the lower courts, to come to a conclusion whether the appeal falls under one or other of the two categories mentioned above, and then, if the court is satisfied that it is a fit case to review the entire evidence, to do so.

The second method is a more convenient one as it also pre vents the unnecessary waste of time involved in adopting the alter native procedure of treating practically such an appeal as a regulaappeal. Obviously this Court cannot lay down an inflexible rule of practice in this regard and it must be left to the division benches to follow the procedure that appears suitable to them.

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Sanwat Singh v. State of Rajasthan, [1961] 3 S.C.R. 120, followed.

State of Bombay v. Rusy Mistry, A.I.R. 1960 S.C. 391, followed.

(2) The High Court had borne in mind the principles laid down by this Court in Sanwat Singh's case and had considered the entire evidence carefully and arrived at the finding of fact as it did. It is not an exceptional case in which the entire evidence can be reviewed.

(3) On the facts found no case of private defence could be made out. This plea was not raised either before the trial court or before High Court.

Held (per Raghubar Dayal J.) (1) Dividing the hearing of an appeal under Art. 136 into two parts, hearing on a broader view and later, if necessary, on facts, does not go to make a hearing as perfect as it would be desirable for a proper adjudication of the appeal.

(2) It is not desirable to lay down any limitation about the scope of the jurisdiction of this Court and the limits of the exercise of its discretion in hearing an appeal of this nature as this Court has full discretion to hear an appeal on both facts and law.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 53 of 1962.

Appeal by special leave from the judgment and order dated January 9, 1961, of the Punjab High Court in Criminal Appeal No. 1018 of 1960.

A. Ranganadham Chetty and K. L. Arora, for the appellants. B. K. Khanna and P. D. Menon, for the respondent. May 10, 1963.The judgment of Subba Rao and Mudholkar JJ., was delivered by Subba Rao J. Dayal J. delivered a separate Opinion.

SUBBA RAO J.-The appeal by special leave is directed against the judgment of the High Court of judicature for Punjab at Chandigarh setting aside that of the Second Additional Sessions judge, Ferozepore, acquitting the 5 appellants of the charges under S. 148 and ss. 302/149 of the Indian Penal Code and convicting them under the said sections and sentencing each of them to rigorous imprisonment for life and one year respectively.

The prosecution case may be briefly stated : On December 23, 1959, the 5 appellants formed themselves into an unlawful assembly and in pursuance of their common object caused the death of Gurdit Singh and his son Pal Singh. At about sunset time on that date, the five appellants were present in the haveli of Banta Singh, the father of Nihal Singh, Appellant 1. When Tara Singh was proceeding towards his house, the 5 appellants, armed with deadly weapons, came out of the haveli and chased him for the purpose of assaulting him. At that time Ranjit Singh, who was watering his cattle at a nearby well, asked them not to beat Tara Singh. Tara Singh also raised an alarm when he was being pursued by the appellants. Gurdit Singh, father of Ranjit Singh, Gurdit Singh's another son Pal Singh and Pal Singh's son Balbir Singh also came out of their house on hearing the alarm raised by Tara Singh. Pal Singh was carrying a take away in his hand. Gurdit Singh and Pal Singh asked the assailants not to beat Tara Singh. Dalip Singh, Appellant 3, caught hold of Pal Singh from behind and Nihal Singh, Appellant 1, aimed a dang blow at Pal Singh's head. Pal Singh used his takwa in self-defence against Darshan Singh, Appellant 4, whereupon Harbans Singh, Appellant 5, gave a blow with his takwa to Pal Singh and the latter fell down. Thereafter, Darshan Singh and Pritam Singh, Appellant 2 belaboured Pal Singh with their takwa when the latter was lying on the ground. The takwa in the hand of Pal Singh fell down from his hand and thereupon his father, Gurdit Singh, seized the same and attempted to use it against the appellants; Pritam Singh gave a dang blow to Gurdit Singh on his head. Harbans Singh and Darshan Singh also did likewise. Gurdit Singh died on the spot and Pal Singh, a little time thereafter. The appellants were committed to the Sessions to meet the aforesaid charges. The appellants pleaded "not guilty" to the charges and stated that they were all implicated because of enmity. The learned Additional Sessions judge, on a consideration of the evidence, came to the conclusion that the prosecution had failed to prove their case beyond all manner of doubt against any of the accused and, on that finding, acquitted all of them. On appeal, the High Court, on a review of the entire evidence, came to a different conclusion : it held that the learned Additional Sessions judge was completely wrong in discrediting the prosecution witnesses and, on that find IA-2 S C India/64 ing. It convicted the appellants :.and sentenced them as aforesaid. Hence the appeal.

This Court in Sanwat Singh v. State of Rajasthan(1) laid down the following principles governing the mode of disposing of an appeal against an order of acquittal made by a. subordinate Court "The foregoing discussion yields the following results : (1). an appellate Court has. full powers to review the evidence upon which the order of acquittal is founded ; (2) the principles, laid down in sheo Swarup's case(1)afford a correct guide for the appeals late Court's approach to a case in disposing of such an appeal ; and (3) the different phraseology used in the judgments of this Court, such as, (1)

substantial and compelling reasons", (ii) "good and sufficient cogent reasons", and' (ii) "strong reasons" are not intended to curtail the undoubted power of an appellate Court in an appeal against. acquittal 'to review the entire evidence and to 'Come to its own conclusion ; but in doing so it should not only consider every matter on record having a bearing on the, questions of fact and the reasons given by the Court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment which lead it to hold that the acquittal was not justified."

But the more difficult question is to define the scope of the jurisdiction of this Court and the limits I of the exercise of its discretion in an appeal under Art. 136 of the Constitution against the judgment of the High Court convicting an I accused after setting aside the order of acquittal made by a subordinate Court. Article 136 of the Constitution is couched in the widest phraseology This Court's jurisdiction is limited only by its discretion. It can, therefore, in its discretion, entertain an appeal and exercise all the powers of an appellate Court in respect of judgments, decrees determinations, sentences or orders mentioned therein' It means that,this Court has undoubtedly jurisdiction to interfere even with (1) [1961] 3 S.C.R. 120, 129.

(2) [1931] L.R. 61 I.A. 398.

findings of fact arrived at by the High Court in an appeal setting aside those of a subordinate Court acquitting the accused. But this wide jurisdiction has to be regulated by the practice of this Court. The fact that the appellate Court in setting aside the order of acquittal has not fol- lowed the principles laid down by this Court in Sanwat Singh's case(1) may certainly be a ground for this Court interfering with the judgment of the High Court. But if the High Court, having followed the aforesaid principles, has considered the evidence and given findings of fact thereon, we think the same practice obtaining in this Court in regard to findings of fact in appeals under Art. 136 of the Constitution may conveniently be adopted. This Court in State of Bombay v. Rusy Mistry (2) has recorded the practice obtaining in this Court in regard to the regulation of the exercise of its jurisdiction under Art. 136 of the Constitution in criminal appeals thus at p. 395 :

> Article 136 of the Constitution does not confer a right of appeal on any party from the decision of a Court ; but it confers a discretionary power on the Supreme Court to interfere in suitable cases. It is: implicit in the discretionary power that it cannot be exhaustively defined. It cannot obviously be so construed as to confer a right on a party where he has none under the law. The practice of the Privy Council and that followed by the Federal Court and the Supreme Court is not to interfere on questions of fact except in exceptional cases, when the finding is such that "it shocks the conscience of the Court" or "by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise substantial and grave injustice has been done.

The same practice may also govern the exercise of discretion of this Court in disposing of an appeal against a judgment of an appellate Court setting aside an order of acquittal made by a subordinate Court. Shortly stated, ordinarily this Court addresses itself to two questions when such an appeal

comes before it for disposal, namely,, (1) [1961] 3 S.C.R. 120, 129.

(2) A.I.R. 1960 S.C. 391.

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(i)did the appellate Court follow the principles laid down by this Court in Sanwat Singh's case (1) in appreciating the evidence ; and (ii) if it did, is it one of those exceptional cases which calls for the interference of this Court. There are two ways of approach to such an appeal : one is to go through the entire evidence as this Court does in a regular appeal and then come to a conclusion whether the High Court has infringed the principles laid down in Sanwat Singh's case(1) or to ascertain whether the appeal is an exceptional one which calls for the interference of this Court in the interest of justice. The other and more convenient method is to allow the counsel to state the case broadly and, after going through the judgments of the lower Courts, to come to a conclusion whether the appeal falls under one or other of the two categories mentioned above and then, if the Court is satisfied that it is a fit case to review the entire evidence, to do so. Obviously this Court cannot lay down an inflexible rule of practice in this regard and it must be left to the division Benches dealing with such appeals to follow the procedure that appears suitable to them. But it may not be out of place to observe that in our view the second method is a more appropriate or at any rate a more convenient one, for while it enables this Court to do justice in an appropriate case, it also prevents the unnecessary waste of time involved in adopting the alternative procedure of treating practically such an appeal as a regular appeal.

Let us now look at the contentions of the parties from the said perspective. The prosecution story was deposed to by three -eye-witnesses, Ranjit Singh (P.W. 2), Saudagar Singh (P.W. 3) and Balbir Singh (P.W. 4) and by Balwant Singh, Sarpanch (P.W. 7), who is -alleged to have gone to the spot immediately after the occurrence. This oral evidence is also sought to be corroborated by the production of weapons by the accused persons. The learned Additional Sessions judge discarded the evidence mainly on the following grounds : (1) The distance between the havli of Banta Singh and the place of (1) [1961] 3 S.C.R. 120, 129.

occurrence is 17 karams i. e., about 85 feet, and that between the place of occurrence and the gate of the house of Pal Singh is 22 karams, i.e., about 110 feet, and therefore it is not possible that the impact between the assailants and the deceased persons could have taken place at the place of clash as described by the prosecution witnesses. (2) The time when the murders were committed was about 9 p.m. and not sunset time as has been described by the prosecution witnesses, for (a) the medical evidence showed that there was semidigested food of about 2 lbs. in the stomach of Gurgit Singh and also 12 ounces of urine in his bladder, which indicated that he should have been done to death when asleep after taking meals ; (b) as P.W. 1 the lady doctor has stated that the likely duration between the injuries inflicted on the two deceased persons and their death was about 4 or 5 hours ; this circumstance contradicts the evidence that they succumbed to the injuries soon after they were injured ; (c) the distance between the village of occurrence and the police station Mallan Wala is about 61 miles and therefore P.W. 2 who gave the first information report should have reached the police station at the latest at about 9 p.m., but as a matter of fact the report was lodged

at about 12.45 a.m. on December 24, 1959. (3) (a) While P.W. 2 stated that the deceased Gurdit Singh gave a takwa blow on the head of Nihal Singh, the doctor's examination did not disclose that there was any injury on the head of Nihal Singh, but there was only an abration "'XI" on the back of -his left thumb ; (b) while P.W. 3 stated that deceased Gurdit Singh had used takwa against Dalip Singh, the doctor was not in a position to state the nature of the weapon with which the injury found on him was inflicted. (4) Dalip Singh not having been found with any weapon, his name should have been falsely introduced by the prosecution. (5) P.W. 7 stated in the cross-examination that he could not say that the blood found in the two places near the chowk was a masha or more and that it negatived the story of the murder of two persons at the place of occurrence. And (6) there are discrepancies in minor particulars between the evidence of different witnesses.

The High Court was satisfied that the learned Additional Sessions judge magnified the importance of minor aspects of the evidence and minimised or ignored its basic features. Having due regard to the principles laid down by this Court in Sanvat Singh's case(1), the High Court considered the evidence over again in detail and came the conclusion that the prosecution had brought home the guilt to the accused. On that view, the High Court, as we have already stated, convicted the accused and sentenced them. Mr. A. Ranganadham Chetty, for the appellants contends that the learned Additional Sessions judge had taken a reasonable view of the evidence and the High Court wrongly took a different view by not appreciating the important circumstances which weighed with the Additional Sessions Judge and that, on the evidence, a cleir case of private defence has been made out.

The important around that appealed to the learned Additional Sessions judge was that, having regard to the distances, the deceased could not have been murdered at the place where it is alleged by the witnesses that they were so murdered. If we may say so, this argument on the basis of time and distance and the movements of witnesses is highly hypothetical and artificial, for the simple reason that it is impossible to expect any witness, much less an illiterate one, to describe the said particulars in such a scientific detail as to stand the test of calculation. But that is what the learned Additional Sessions Judge did and it was rightly discarded by the High Court.

The next circumstance strongly relied upon is the insect bites found on the dead body of Pal Singh. Dr. Balbir Kaur, the lady doctor, in her postmortem examination of the dead body found that "both nostrils, lower lips and fore-head bore the insect bite". Udham Singh the Police Officer, in his injury statement, described the said injuries as "the bite marks of some animal like a rat on the nose, the lower lip, the right cheek and the lid of left eye". The lady doctor's description may be accepted as more accurate. It is, there (1) [1961] 3 S.C.R. 120, 129, fore clear that there was some insect bite on the face of the deceased Pal Singh. The contention is that no rat or insect could have bitten a dead body in the room in which it was placed when the light was burning, when it was covered and when so many people were present by its side, and, therefore, the said bite must have been caused by some rat or rats when the deceased was sleeping at about 9 p.m. near a sugar-cane crusher installed in the field. It is true that there is some evidence that sugar-cane crusher was purchased, though it was not installed and it was in a vacant space measuring about 5 to 6 marlas at the back of Ranjit Singh's house. But from this it would be an unreasonable inference that the witnesses were not speaking the truth. We do not see any improbability in some insect or rat getting under the cloth

covering the dead body and biting it.

Another circumstance which has been magnified by the learned Additional Sessions Judge is the discovery at the time of postmortem of not less than 2 lbs. of semi-degested food in the stomach and 12 ounces of urine in the bladder of the deceased Gurdit Singh. It is said that this circumstance demonstrates that the said deceased must have taken his food and must be sleeping when he was murdered, for if he was murdered at 5.30 p.m. as the witnesses deposed there would not have been such semi-digested food in the stomach of the deceased or such a large quantity of urine in his bladder. The High Court pointed out that the said circumstances cannot afford a reliable basis of ascertaining the time of death, particularly when there is nothing on the record to show that the deceased had not taken any food a couple. of hours before he was attacked. Apart from the fact that the time required to digest food varies depending upon the nature of the food taken, the digestive capacity of the individual concerned and his health at a particular time, it is also not possible to rely upon such evidence unless there is some definite evidence that the deceased had not taken any substantial food within a few hours before his death. Without such definite data, a Court cannot come to any conclusion on the general habit of villagers taking lunch at 1 p.m. and dinner at 7 p.m. The capacity to retain urine for longer time than usual depends upon individual habits. That apart this aspect of the case was not pursued in the cross-examination of the doctor and no question was put to her on the basis of the said two fac- tors. The High Court was, therefore, right in holding that the learned Additional Sessions Judge was wrong in giving undue importance to the said circumstances. The learned Additional Sessions Judge again relied upon the statement of Dr. Balbir Kaur. to the effect that the duration between the infliction of the injuries on the deceased and their death might be 4 or 5 hours and concluded that the witnesses were not speaking the truth when they said that the deceased succumbed to the injuries either on the spot or immediately after receiving the injuries. The doctor in her evidence said that in the case of Gurdit Singh the injuries were anti-mortem in nature and that the prob- able time between the infliction of the injuries and death was a few hours or so and that in the case of Pal Singh also she said that the probable time between the infliction of the injury and death was a few hours. This evidence was only a mere surmise and was neither intended to be accurate nor was it based up any scientific data. She only meant that death had taken place within a few hours after the incident. Such a bald opinion could not certainly outweigh the direct evidence in the case. Some argument was made in regard to the alleged delay in lodging the first information report at the police station in support of the contention that the murder must have been committed in the night. According to the prosecution the murder was committed at 5.30 p.m. ; the first information report was lodged at 12.45 a.m. the next day i. e., just after midnight. From this it is stated that the distance between the place of the incident and the police station is only 6-1/2 miles and that there is some evidence to show that the parties went on mares and that the delay in giving the report supports the case that the murder must have been committed only in the night. That was accepted by the learned Additional Sessions Judge. The High Court rightly pointed out that in the circumstances of the case the first information report was neither unduly nor unnecessarily delayed. Ranjit Singh stated in the evidence that he did not use mares at all in going to the police station, as the road was not fit for using them and the witnesses also stated that they wanted to go quietly without being noticed by the accused who were hovering about the place. In the circumstances we agree with the High Court that there was no such delay as to discredit the evidence on the ground that the first information report was concocted and the evidence was so

shaped as to fit in the version given in the first infor- mation report.

Another fact relied upon by the learned Additional Sessions judge in discrediting the eye-witnesses is that the witnesses stated that the deceased gave a takwa blow on the head of Nihal Singh, but the medical examination showed only a small abrasion on his left thumb. The High Court explained that the witnesses must be describing only the movements of the accused with their weapons and they could not obviously give evidence as to where a particular weapon hit the body, for that would depend upon not only the manner in which the persons wielded their weapons but also on the movements of the victim. A hit aimed at the head may, if the victim moves aside, miss altogether the body of the victim or fall on a part of his body different from that aimed at. There is certainly force in what the High Court said.

It was then stated that according to some prosecution witnesses the accused had raised their weapons with a view to using them against Tara Singh and indeed surrounded him and that, if that version was upheld, it was impossible for Tara Singh to escape unhurt. If that be so, the argument proceeded, the version given by the prosecution witnesses must be untrue. This argument is built upon the English expression "surrounded", which is translated from a corresponding word in the Punjabi language. We are told that the Punjabi expression would also mean "pursued". Be it as it may, no argument could be built upon that, because in the context, the witnesses could have only meant that the accused pursued Tara Singh.

We have been taken through the judgment of the High Court. We are satisfied that the High Court has borne in mind the principles laid down by this Court in Sanwat Singh's case(1) and has considered the entire evidence (1) [1961] 3 S.C.R. 120, 129.

carefully and arrived at the finding of fact as it did. We do not see any exceptional circumstances to depart from the usual practice and review the evidence over again. Then it is contended that on the facts found a case of private defence has been made out. It may be mentioned that the plea of private defence has not been taken either before the learned Additional Sessions judge or before the High Court on appeal. Nor is there any foundation for such a plea on the facts found. The argument is mainly built upon the description of the event by the eye-witnesses. P.W. 2 described the incident thus:

> "While the accused were still chasing Tara Singh, my father Gurdit Singh and brother Pal Singh came out of their house, Pal Singh armed with a takwa.
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> When Gurdit Singh and Pal Singh came out of their house they requested the accused not to beat Tara Singh. Dalip Singh, accused, on hearing those words of Gurdit Singh and Pal Singh, took Pal Singh in his grasp from behind. At that stage Nihal Singh, accused, gave a dang blow at the head of Pal Singh, Pal Singh then used his takwa in self defence, against Darshan Singh, accused, using the blunt side thereof. Thereafter, Harbans Singh accused, gave a takwa blow using the blunt side thereof to Pal Singh.

It is argued that after Tara Singh practically escaped from the attacks of the assailants, Darshan Singh just held the hand of Pal Singh from behind whereupon Pal Singh used his Takwa and in self-defence the accused used their weapons. This argument was addressed on the assumption that no takwa blow was aimed on the head of Pal Singh and the accused only grasped Pal Singh. If that was so, the argument proceeded, Pal Singh in using his takwa was the aggressor and, therefore, the accused were entitled to defend themselves. If we accept this argument, we would be misreading the evidence. Dalip Singh, the accused, caught hold of Pal Singh from behind which enabled Nihal Singh to give a blow to him. The said act of Dalip Singh and the immediate blow given to Pal Singh by Nihal Singh followed by the subsequent blows by the other accused leave no scope for the argument of private defence. The accused were certainly aggressors and no question of private defence would arise in this case.

Lastly it is contended that the prosecution has not established any common object of the accused to murder the deceased and, therefore, the High Court was wrong in convicting them under ss. 302/149 of the Indian Penal Code. It is said that nothing has been suggested in the evidence that the accused were lying in wait to kill Tara Singh or his rescuers, that the incident developed suddenly and, therefore there is no common object to kill either of the two deceased. But the evidence clearly discloses that all the accused conjointly took active part in inflicting serious injuries on the two deceased. Accused-3 grasped Pal Singh from behind, Accused-1 gave a dang blow on his head, Accused-5 gave a takwa blow on him, and after the victim fell down, Accused-2 and 4 gave soti blows to him while he was lying on the ground ; so too, Accused-2 gave a dang blow on the head of Gurdit Singh. Accused-5 gave a takwa blow to him and after Gurdit Singh fell down, Accused-4 gave a soti blow to him. It is, therefore, obvious that all the accused were armed with deadly weapons and that as soon as Tara Singh came they rushed at him and when the deceased came to rescue him they conjointly used those weapons and gave them serious injuries which ended in their immediate death. In the circumstances the object to kill the deceased was writ large on the evidence. There is no force in this argument. In the result, the appeal falls and is dismissed. RAGHUBAR DAYAL J.-I agree that the appeal be dismissed. I, however, state about the approach of the Court to such appeals. I do not consider it desirable to lay down any limitation about the scope of the jurisdiction of this Court and the limits of the exercise of its discretion in an appeal under Art. 136 against the judgment of a High Court convicting an accused after setting aside the order of acquittal made by a subordinate court. The entire exercise of the Court's discretion under Art. 136 is solely dependant on the views of a particular Bench deciding a certain appeal on the basis of the facts and law and it is for that Bench as to how to proceed to hear and decide that appeal. No useful purpose to my mind, is served by laying down what appears to a certain Bench to be a preferable mode for hearing such appeals and when to interfere with the order of the Court below.

It is admitted that the jurisdiction of this Court is wide. Ordinarily one would like to exercise it according to the practice of the Court if that be definite and uniform. Different Benches appear to have proceeded in different manner and to have had different objective outlook on the appeal. Reference may be made to the observations of this Court in Harnam Singh v. State of Punjab(1)- It is really for the Bench hearing the special leave peti- tion to consider as fully as possible whether the case deserves a hearing in this Court; if it deserves a hearing whether that is to be limited to any particular aspect of law or fact and that therefore if the Bench grants special leave, it should make

clear the matters on which it considers a hearing in this Court desirable or necessary. If no such indication is given, I would prefer that the appeal be heard both on facts and law. of course everybody is agreed that the appeal is to be heard on points of law. There is also some common agreement that one should not lightly interfere with the findings of fact arrived at by the High Court, but in this matter there is always wide scope for different outlook. It is better that the counsel for the parties should know beforehand on what points that would be heard so that they come prepared on those points. What happens now, to my mind, is that counsel usually come ready for questions of law. The appellant's counsel, however, tries to induce the Court to go into questions of fact and whenever he succeeds he has not much to argue thereafter. The respondent's counsel, however, is taken un- awares. He does not come prepared to meet the appellant on facts. He can do his best in the circumstances to help the Court, and this cannot be much. I therefore feel that dividing the hearing of an appeal under Art. 136 (1) [1962] Supp. 1 S.C.R. 104.

into two parts, hearing on a broader view and later, if necessary, on facts, does not go to make a hearing as per- fect as it would be desirable for a proper adjudication of the appeal. If parties know that once they obtain special leave without limitations they will be free to argue on facts, they will come prepared and will present the case as best as possible for their clients, and the Court too would be in a better position to decide.

of course, after hearing the appeal fully, this Court is in the best position as to how to dispose of the appeal. It can surely dispose of it by merely stating that it sees no reason to consider the findings of fact to be incorrect or it may consider those findings and express a different opi- nion.

I would, however, as stated earlier, not like to express anything with respect to how such an appeal be heard by this Court, when it is not doubted that this Court has full discretion to hear an appeal on facts and law and has, for similar reason laid down that the High Court has full power to review evidence when hearing an appeal against acquittal under s. 423 Cr. P.C.

Appeal dismissed.