AFR

Reserved on 15.07.2022

Delivered on 12.09.2022

<u>**Court No. - 42**</u>
Case :- GOVERNMENT APPEAL No. - 2683 of 1983
Appellant :- State of U.P.
Respondent :- Ram Autar
Counsel for Appellant :- A.G.A.
Counsel for Respondent:- R.B. Sahai, Mohd. Ishraque Farooqui, Pradeep Kumar

<u>**Hon'ble Vivek Kumar Birla, J.**</u>
<u>**Hon'ble Vikas Budhwar, J.**</u>

(Per: Hon'ble Vivek Kumar Birla, J.)

1. Heard Sri Ratan Singh, learned AGA appearing for the appellant-State of UP, Sri Pradeep Kumar, learned counsel appearing for the accused-respondent and perused the record.

2. Present government appeal has been preferred against the judgment and order dated 26.07.1983 passed by the Learned Special Judge, Fatehpur in Session Trial No. 104 of 1983 (State vs. Ram Autar Kori), arising out of Case Crimes No. 172/1982, under Section 302 IPC, Police Station Khakhreru, District Fatehpur.

3. Prosecution story, in brief, is that on 07.12.1982 the complainant- Shiv Saran Singh along with his brother Babu Singh went to their Gram field situated the western side of the village and at about 1:00 pm (noon), they saw the mother and sister of the accused Ram Autar were plucking Gram leaves in their field. Babu Singh asked them not to pluck the same as the plants were too small but they did not listen and continued to plucking out the gram leaves. On this, Babu Singh inflicted two slaps to the sister of accused-Ram Autar and banished her from his field. On this the mother and sister of the accused returned to their house abusing him. After taking

round of the field while Shiv Saran Singh and Babu Singh were coming back to their house for taking bath and meals, when they reached near the house of Ram Autar, accused Ram Autar surrounded them and asked Babu Singh as to why he slapped his sister and took out country made pistol from his waist and fired on the chest of Babu Singh. The alleged incident was witnessed by neighbours Dasrath, Shiv Mohan, Govardhan and others. Ram Raj and Ram Ballaiya also saw the occurrence. When they tried to catch hold the accused, he reloaded the country made pistol, threatened the witnesses and ran away towards west. On receiving gun shot injury, complainant brother Babu Singh fell on the ground and thereafter the injured was placed on the Chabutara of Goverdhan where he died. The accused shot complainant's brother at 2.00 pm. Thereafter, a first information report of the incident was lodged at police station -Khakreu on the same day at 3.00 pm. in the presence of Investigating Officer, who recorded the statement of the complainant under Section 161 Cr.P.C. The investigating Officer proceeded to place of occurrence and inspected the dead body and sealed the same. Site plan was prepared and after completing investigation a charge-sheet under section 302 IPC was submitted against the accused Ram Autar.

4. In support of prosecution case, PW-1-Shiv Saran Singh, PW-2-Dashrath, PW-3-Station House Officer-Madan Singh and PW-4 Dr. Satish Chandra Srivastava were produced and examined before the Court below.

5. Apart from other formal documents, site plan is Ext. Ka-9, recovery memo of bloodstained and plain earth is Ext. Ka-10, recovery memo recovering one empty cartridge recovered from the place of occurrence is Ex. Ka-11, charge-sheet is Ext. Ka-13 and Post mortem report is Ex. Ka-14.

6. PW-1-Shiv Sharan Singh, who was the eye witness of the incident, in his statement had stated that he works in Maya Press,

Allahabad and used to do the same job during the days of the incident and he had come home on leave. He further stated that deceased Babu Singh was his younger brother and at the time of incident he was working as Constable in the Police Department and was posted in Allahabad and was also on leave during those days. He further deposed that his house and the accused's house is on the same road and when we come from our field, the accused house comes first and thereafter we would reach to his own house. He further stated that the residence of Ram Autar was in front of the house of Dashrath Dhobi and thereafter there is residence of Goverdhan. While narrating the incident he stated that on 07.12.1982 at about 11.30 am when he and his younger brother Babu Singh had gone to their field they found that the mother and sister of the accused Ram Autar were plucking gram leaves, which was objected to by his brother and when they did not stop, his brother Babu Singh twice slapped the sister of Ram Autar and banished her from his field. On this the mother and sister of the accused returned to their house abusing him. After some time when they were returning home at about 1.45-2.00 pm and when they reached near the house of Ram Autar, Ram Autar came out and stood in front of his brother and said that since you have slapped my sister, I will teach you a lesson and took out a country made pistol from his waist and fired on the chest of Babu Singh. Babu Singh fell on the ground. He further stated that when he tried to move forward and started shouting then villagers Goverdhan, Dasrath, Shiv Mohan, Layak Singh and Ram Raj came to the spot, who have seen the incident and when they tried to catch hold the accused, he reloaded the country made pistol, threatened the witnesses and ran away towards west. He further deposed that after the incident the injured lay down on the Chabutara of Goverdhan, where he died.

7. PW.2-Dashrath in his statement had stated that it is six months

from today that Babu Singh was killed. On that date he was sitting at his door. It was the day time around 1.30 am. He saw Babu Singh alongwith his brother Shiv Sharan coming from West. When Babu Singh reached near the house of Ram Autar, the accused Ram Autar came out of his house and told Babu Singh that why did you slap my sister and took out a country made pistol from his waist and fired at Babu Singh. Thereafter Babu Singh fell on the ground. Seeing this incident Goverdhan and he, sitting on the Chabutara in front of his house, ran towards the spot. The other villagers Ram Raj, Layak Singh also came to spot and they have also witnessed the incident. We all tried to catch hold the accused but he reloaded the country made pistol, threatened us and ran away towards west first and thereafter ran towards south. When the Investigating Officer came to the spot then he recovered the empty cartridge lying on the ground. He also told the Investigating Officer about the incident. After the incident Shiv Sharan Singh, brother of deceased- Babu Singh lifted the deceased from the way and laid down him in the Chabutara of Goverdhan, where he died. Then Shiv Sharan Singh went to lodge the report. He further deposed that on the date of occurrence, he was at home as he could not go to work on account of illness. He stated that he heard that Ram Autar was saying why do you slap my sister and that I do not know other things. The mother and sister of accused were present at home but they did not come outside the door. He further deposed that the deceased Babu Singh was empty hand and he wore an underwear only. Ram Autar was sitting on his Chabutara but when his mother and sister came then he went inside the house and after 10 to 15 minutes he again came outside and sat on Chabutara. He further deposed that the accused was sitting on his Chabutara earlier and when he saw Babu Singh coming he rushed towards him. Accused asked Babu Singh repeatedly why did you slap my sister but Babu Singh did not reply. After murder he did not

ask anyone why did this murder took place. When Ram Autar stopped Babu Singh then he was towards east of Ram Autar. He further deposed that Babu Singh was aged about 25 years and not married but his conduct was not bad and it would be wrong to say that his murder took place on account of illicit relationship.

8. PW-3-Station House Officer-Madan Singh has stated on oath that he was posted as Station House Officer in Police Station Khakrau from 07.12.1982 to 17.12.1982 and this incident was reported in front of him. Head Constable Bindravan Sharma has also worked with him. he recognize his writing and signature. He further stated that on the basis of the written complaint, he prepared Chick FIR and G.D, on which Ex.A-2 was inserted. He further stated on oath that he started the investigation of this case and recorded the statement of appellant at the police station and then went to the place of occurrence where he found the dead body of Babu Singh lying on Chabutara of Goverdhan Kori. Panchayatnama was prepared. He further stated on oath that he inspected the place of occurrence and site plan was also prepared. He also recovered plain earth and bloodstained earth from the spot and prepared the fard report by filling it in different boxes, on which Ex.A-10 was inserted. He further stated that he recovered an empty cartridge from the spot and sealed the same, on which Ex.A-11 was inserted. Thereafter PW-3 searched the accused house. Accused was not found there. Illegal cartridges were recovered from the accused house and he had prepared the fard report and sealed the same. Thereafter PW-3 took the statements of Goverdhan and Dashrath Kori and a police team was sent to search for the accused. On 08.12.1982 he took the statements of other witnesses. The accused kept on running and could not be arrested. On the same day PW-3 gave the report of Section 82-83 Cr.P.C. and after receiving the warrant from the court he attached the goods of accused and on 14.12.1982 he has prepared

a fard report. PW-3 further stated on oath that latter the accused appeared before the Court and Investigating Officer gave the chargesheet before the Court, which is Ex.A-13. He further stated that during the investigation he could not find the sister and mother of the accused nor did he try to find them. He found the dead body at the same place where the deceased was shot and he took the blood from the Chabutara of Goverdhan where the dead body was lying. In the site map he has shown the place of occurrence as "A". No blood was found on that place. It is wrong to say that investigation was not done properly.

9. PW-4 Dr. Satish Chandra Srivastava has stated on oath that on 08.12.1982 he was posted as Medical Officer in Sadar Hospital, Fatehpur and on this day he did the post mortem of the deceased Babu Singh. He stated that the deceased died a day before; he was about 26 years old; rigor mortis was present; the legs were swollen and the eyes were half open. PW.4 found two scratches measuring ¾ x ¾ cm on the left side in front of the chest and both were present at the distance of ¼ cm. He also found gun shot wound ¾ x ¾ x to the depth of the chest on the left side and blackening was present; the direction of pallet was from left to right. PW.4 has further stated that he conducted the internal examination of the dead body and found first and second ribs on the left side were fractured and torn; Pluria was also torn; right and left lungs and heart were also punctured and torn; collected blood was found on the chest; half digested food was found in the stomach; small intestine was empty and large intestine was full; no injury was found on the stomach; a big pallet was found inside the chest, which was sealed in an envelop and sent to S.P. Fatehpur. He further stated on oath that the deceased died of shock and bleeding due to above mentioned injuries. He further stated that the death of the deceased was possible on 07.12.1982 at 2.00 pm due to fire arm injury; scratches can also come from falling on the

ground. He next stated that looking at the direction of the bullet injury, it appears that the deceased was fired from the left side; there should be a difference of 4-6 hours in the time of death.

10. The judgment of acquittal was passed on the ground that it is alleged that PW-1-Shiv Sharan Singh, real brother of the deceased Babu Singh was accompanying the deceased while coming back from his field and when the deceased fired upon by accused Ram Autar several persons have also gathered on the spot but no one including the PW-1-Shiv Sharan Singh tried to stop the accused from running away, therefore, he had acted contrary to the natural reaction which makes his presence doubtful as had he being there he would have chased the accused and would have gone to the house of the accused and would have caught hold of him. Presumption was raised that since the informant side and his brother are the owner of the agricultural field whereas the accused belonging to labour class therefore, it is not understandable that the deceased Babu Singh slapped only the sister of the accused, who was aged about 9-10 years and why he has not slapped the mother of the accused, therefore, on these very ground the Trial Court has drawn the presumption that it appear that the informant was not present on the spot. It was further recorded that the gram plants were too small to be plucked and therefore, the allegation of plucking gram plants does not appear to be correct. By drawing inference from the statement of PW-2-Dashrath, who is also an eye witness that when the accused Ram Autar was scolding and was repeatedly asking the deceased why he slapped his sister but he did not reply and that he did not try to snatch countrymade pistol from the accused hands and at that point of time some other witnesses, namely, Ram Raj, Layak Singh and Goverdhan including some other persons have gathered on the spot, therefore, as he has not mentioned the name of informant-PW-1- Shiv Sharan Singh alongwith names of other persons, who have

seen the incident establishes that PW-2-Dashrath has admitted that the informant was not present on the spot. Further inference from the statement of PW-2 Dashrath was drawn that as the deceased was wearing only underwear and was not wearing any other cloth on his body, therefore, there is a presumption of his bad character as alleged, which could be the motive of being fired upon, otherwise he would have wearing shirt, banyan or paijama etc. while he was going to or coming from his field, moreso, when he was in police and was a reputed person of the village. As such a conclusion was drawn by the trial court that the incident has not taken place in the manner as alleged. The place of incident was also found to be doubtful on the ground that the Investigating Officer did not collect any blood from the spot and that blood was found only on the Chabutara of Goverdhan where the dead body was lying and it is from there only the blood stained and plain soil was collected. The Trial Court further observed that the Investigating Officer has not visited the gram field and has not shown the same in the site plan and nothing has been written about the aforesaid field in the case diary. The Trial Court further recorded that the Investigating Officer did not meet the mother and sister of the accused or any other family members of the accused during investigation and made no enquiry from them and that he did not find any blood on the spot and has also not recovered any empty cartridge on the spot. It was further found that although allegation is that the deceased was fired from the front side, however, he had suffered firearm injuries on the left side and the post mortem report reflected that semi digested food was present in the stomach which proves that he must have eaten something about two hours before he was fired upon. Therefore, the Trial Court found that the informant and deceased has gone out to visit their agricultural field is not convincing, as they usually visit their field only in the morning hours and usually villagers take their lunch by 10-11 am and relax

thereafter, therefore, prosecution story of informant and deceased visiting agricultural field at about 12.00-1.00 in the noon, is not correct. The Trial Court has further observed that there were no special circumstances for which accused could have murdered the deceased and the reason of plucking gram plants is false. The deceased could have treated the sister of the accused softly and send her back to her home. It was further observed that it appears that when the informant and his family members started suspecting about the murder of the deceased, therefore, for this reason the entire family of the accused including the accused-Ram Autar escaped from their house and for this reason the Investigating Officer did not find them at their home which indicates that the accused was not present on the spot or he had left the place and nobody has seen the incident. On these grounds the trial court has passed the judgment of acquittal.

11. Challenging the impugned judgment, Sri Ratan Singh, learned AGA submits that there was cogent evidence to convict the accused herein. He next submits that PW-1-Shiv Sharan Singh who is the informant and real brother of the deceased and is eye witness of the incident, narrated the entire incident with all clarity and details. He further submitted that PW-2-Dashrath is the independent witness near whose house murder had taken place and he has clearly spelled tout the reasons as to how he was present on the spot. It is next submitted that both the eye witnesses have withstood their cross examination and nothing adverse came out from their testimonies creating any doubt about the manner, time, place and spot of the murder and that the accused Ram Autar had committed cold blooded murder. By drawing attention to the site plan, learned A.G.A. has submitted that there is no dispute about the spot where the murder had taken place and in the site plan all directions have been shown including the directions from where the informant deceased were coming, from where the eye witnesses have seen the incident, the

spot where the dead body was lying. He has further pointed out that in the site plan spot 'H' has been shown where the empty cartridge was recovered. He further submitted that merely because blood was not found on the spot where the deceased was fired upon would not be sufficient to grant any benefit of doubt to the accused herein. He further submitted that even the Trial Court has recorded a finding that oral as well as documentary evidence available on records clearly establishes that the incident had taken place at the spot, time and date as alleged. He further argued that PW-1-Shiv Sharan Singh is the real brother of the deceased and his presence on the spot is quite natural as they both were returning from the field. He further submitted that PW-2-Dashrath is the independent eye witness and in his statement he has clearly stated that PW-1-Shiv Sharan Singh and his brother-deceased-Babu Singh were coming together from their field. He submitted that the post mortem report clearly support the prosecution version. He next submitted that the empty cartridge was recovered from the spot and recovery memo of empty cartridge is Ex.Ka.11, therefore, finding of the Trial Court that no cartridge was found from the record is contrary to record. He further submitted that the bloodstained soil and plain soil was collected from the spot which was made Ex.Ka.10. He further submitted that PW-4- Dr. Satish Chandra Srivastava, who has conducted the post mortem has proved the post mortem report, had clearly stated and proved that a big size pallet was found inside the body of the deceased. He submitted that there was only one entry wound and further the deceased was immediately put on the Chabutara of Goverdhan from where the blood stained soil was collected, therefore, his blood was not found in the passage (Rasta). It is further submitted that no benefit of defective investigation can be extended to the accused in a case of direct evidence, therefore, in such a case of direct evidence absence of blood on the passage would not go in favour of the

accused person. Learned AGA further submitted that the findings given by the Trial Court to the effect that why the informant and PW.2 did not chase the accused is absolutely perverse inasmuch as eye witnesses have categorically stated that the accused Ram Autar has re-loaded the country made pistol and threatened the persons present on the spot that he would kill them also. Learned AGA further submitted that allegation of bad character of the deceased is neither here nor there as nothing was placed on record to prove the same and this presumption is wholly perverse. He further submitted that the presumption that on such a small thing the murder could not have taken place is neither here nor there as in the case of direct evidence motive is irrelevant. He further pointed out that the accused in his statement under Section 313 Cr.P.C. has mentioned at one place that he was falsely implicated in the present case due to 'enmity' and at an other place he has stated that he was falsely implicated due to 'old enmity', however, he has not disclosed on what was the 'enmity' or 'old enmity'. Further submission of the learned AGA is that there was a prompt FIR as the incident had taken place at 2.00 pm and the FIR was lodged at 3.00 pm. Submission, therefore, is that the prosecution has proved his case beyond any shadow of doubt and the impugned judgment based purely on presumption is highly perverse and therefore, the same is liable to be reversed and accused is liable to be convicted for the offence under Section 302 IPC.

12. Per contra, Sri Pradeep Kumar, learned counsel for the accused respondents submitted that no blood was found at the spot 'A' where the deceased was allegedly fired upon by the accused. He further submitted that PW-1 himself has stated that the deceased was fired upon in the passage but no blood was found therefrom and the Investigating Officer has collected the bloodstained and plain soil from the Chabutara of Goverdhan from spot 'X' , therefore, the Trial

Court has rightly disbelieved the manner and the spot where the crime was committed and rightly found that the same was not committed by the accused respondent-Ram Autar. He submits that therefrom, it is clear that the memo of recovery is false and place of occurrence is highly doubtful. It is further submitted that PW-3, Station House Officer had stated in his statement that he had recovered one empty cartridge from the spot and he has also stated that thereafter he had recovered illegal cartridges and empty cartridges from the house of the accused, this clearly shows that the recovery memo of empty cartridges from the spot is not worth believed. He further submitted that as per alleged eye witness account the shot was fired from the front side but as per the post mortem report the fire has hit the deceased on the left side, therefore, post mortem report does not support the prosecution version and therefore, eye witness account is false. He further submitted that in the statement under Section 313 Cr.P.C. the accused has clearly stated that he was falsely implicated due to enmity. He submitted that as the deceased was wearing underwear only, therefore, presumption of his bad character has been correctly raised by the Trial Court to hold that murder may have been committed by someone and not the accused.

13. We have considered the submissions and have perused the record.

14. Before proceeding further, it would be appropriate to take note of law on the appeal against acquittal.

15. In a recent judgement of this Court in **Virendra Singh vs. State of UP and others**, 2022 (3) ADJ 354 DB, the law on the issue involved has been considered. For ready reference, paragraphs 10, 11 and 12 are quoted as under:

> *"**10.** In the case of Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179, the Hon'ble Apex Court has observed that*

while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Paragraphs 12 to 19 of the aforesaid judgment are quoted as under:-

> *"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. AIR 1974 SC 2165; Shambhoo Missir & Anr. v. State of Bihar AIR 1991 SC 315; Shailendra Pratap & Anr. v. State of U.P. AIR 2003 SC 1104; Narendra Singh v. State of M.P. (2004) 10 SCC 699; Budh Singh & Ors. v. State of U.P. AIR 2006 SC 2500; State of U.P. v. Ramveer Singh AIR 2007 SC 3075; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors. AIR 2008 SC 2066; Arulvelu & Anr. Vs. State (2009) 10 SCC 206; Perla Somasekhara Reddy & Ors. v. State of A.P. (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh (2010) 2 SCC 445).*
>
> *13. In Sheo Swarup and Ors. King Emperor AIR 1934 PC 227, the Privy Council observed as under:*
>
> > *"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."*
>
> *14. The aforesaid principle of law has consistently been followed by this Court. (See: Tulsiram Kanu v. The State AIR 1954 SC 1; Balbir Singh v. State of Punjab AIR 1957 SC 216; M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200; Khedu Mohton & Ors. v. State of Bihar AIR 1970 SC 66; Sambasivan and Ors. State of Kerala (1998) 5 SCC 412; Bhagwan Singh and Ors. v. State of M.P. (2002) 4 SCC 85; and State of Goa v. Sanjay Thakran and Anr. (2007) 3 SCC 755).*
>
> *15. In Chandrappa and Ors. v. State of Karnataka (2007) 4 SCC*

415, this Court reiterated the legal position as under:

> *"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
>
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

16. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, this Court re-iterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh @ Ram Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of Uttar Pradesh v. Banne alias Baijnath & Ors. (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in Dhanapal v. State by Public Prosecutor, Madras (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

***11.** Hon'ble Apex Court in the case of Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225 : 1996 SCC (Cri) 972 has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.*

***12.** The aforesaid judgments were taken note of with approval by Supreme Court in the case of Anwar Ali and another vs. State of Himachal Pradesh (2020) 10 SCC 166, Nagabhushan vs. State of Karnataka (2021) 5 SCC 222, and Babu (supra) in Achhar Singh vs. State of Himachal Pradesh (2021) 5 SCC 543."*

(Emphasis supplied)

16. In ***State of U.P. Vs. Phool Singh and Others, 2022 (4) ADJ 397 (DB)*** also this Court has considered the law on appeal against acquittal, para 43, 44, 45, 46, 47 and 48 whereof are quoted as under:

"43. In ***State of U.P. v. M.K. Anthony, (1985) 1 SCC 505,*** *the Hon'ble Supreme Court has held that: -*

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the

evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer....."

44. In ***State of U.P. v. Krishna Master, (2010) 12 SCC 324*** *the Hon'ble Supreme Court explained the manner in which the Court should examine the statement of witnesses in the following words:-*

"15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no

criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case."

45. In ***Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1*** *the Hon'ble Supreme Court formulated the principles to be kept in mind by the appellate Court while dealing with appeals against acquittal:-*

"27. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

(ii) The appellate court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence <u>or misread the material evidence</u> or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed."

46. In ***Achhar Singh v. State of H.P., (2021) 5 SCC 543****, the Hon'ble Supreme Court explained the scope of powers of the High Court in appeals against acquittal in the following manner: -*

"16. It is thus a well-crystalized principle that if two views are possible, the High Court ought not to interfere with the trial court's judgment. However, such a precautionary principle cannot be overstretched to portray that the "contours of appeal" against acquittal under Section 378 Cr.P.C. are limited to seeing whether or not the trial court's view was impossible. It is equally well settled that there is no bar on the High Court's power to re-appreciate evidence in an appeal against acquittal. This Court has held in a catena of decisions (including Chandrappa v. State of Karnataka, State of A.P. v. M. Madhusudhan Rao and Raveen Kumar v. State of H.P.) that the Cr.P.C. does not differentiate in the power, scope, jurisdiction or limitation between appeals against judgments of conviction or acquittal and that the appellate court is free to consider on both fact and law, despite the self-restraint that has been ingrained into practice while dealing with orders of acquittal where there is a double presumption of innocence of the accused."

The Hon'ble Supreme Court further held that "homicidal deaths cannot be left to judicium dei. The court in its quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the court, despite its best efforts, fails to reach a firm conclusion that the benefit of doubt is extended."

47. The principles which emerge from the aforesaid decisions, are that the "contours of appeal" against acquittal under Section 378 CrPC are not limited to seeing whether or not the trial court's view was impossible. There is no bar on the High Court's power to reappreciate evidence in an appeal against acquittal. Cr.P.C. does not differentiate in the power, scope, jurisdiction or limitation between appeals against judgments of conviction or acquittal. The appellate court is free to consider on both fact and law, despite the self-restraint that has been ingrained into practice while dealing with orders of acquittal where there is a double presumption of innocence of the accused.

48. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be, but that is a shortcoming from which no criminal case is free. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case. The main thing to be seen is whether those

inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities occurring in the evidence. In the latter, however, no such benefit may be available to it. In the light of these principles, this Court will have to determine whether the evidence of the eyewitnesses examined in this case proves the prosecution case. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like the dying declaration, the appellate court is competent to reverse the decision of the trial court depending on the materials placed."

(emphasis supplied)

17. In a latest judgment in ***Government Appeal No.2995 of 1985 (State of U.P. vs. Laxmi and Others), decided on 13.07.2022,*** this Court once again had the opportunity to consider the law on appeal against acquittal, para 18 and 19 whereof are quoted as under:

"18. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C. the appellate court has to consider whether the trial court's view be deemed as possible one, particularly when evidence on record has been analyzed. The Hon'ble Supreme Court in Jafruddin and others vs. State of Kerala 2022 SCC Online SC 495 in para 25 has held that "while dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

19. Hon'ble Supreme Court in Mohan @ Srinivas @ Seena @ Tailor Seena vs. State of Karnataka, [2021 SCC OnLine SC 1233] has observed as herein-under:-

"20. Section 378 Cr.P.C. enables the State to prefer an appeal against an order of acquittal. Section 384 Cr.P.C. speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the

trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.

23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 Cr.P.C. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali vs. State of Himanchal Pradesh, (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under : (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179]) "20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635 : 1985 SCC (L&S) 131], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [Triveni Rubber & Plastics v. CCE, 1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501], Aruvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC

> *(Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372]*
>
> *It has been further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."*

18. In ***Phool Singh (Supra)*** law relating to the effect of defect in investigation has been discussed, para 56 and 57 whereof are quoted as under:

> *56. The law relating to the effect of a defect in investigation has been discussed and summarized by the Hon'ble Supreme Court in **Gajoo v. State of Uttarakhand, (2012) 9 SCC 532**, in the following words: -*
>
> *"20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263 while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36) "27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. (1972) 3 SCC 613 this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab, (2004) 3 SCC 654, held: (SCC p. 657, para 5) "5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.'*
>
> *28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar (1999) 2 SCC 126, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.*
>
> *29. In Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the*

quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42) "42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.' (emphasis in original)

30. With the passage of time, the law also developed and the dictum of the court emphasised that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in NHRC v. State of Gujarat (2009) 6 SCC 767, held as under: (SCC pp. 777-78, para 6) "6. ... "35. ... The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the "majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators." (Zahira Habibullah case, SCC p. 395, para 35)'

32. In State of Karnataka v. K. Yarappa Reddy (1999) 8 SCC 715, this Court occasioned to consider the similar question of

defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p. 720) "19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.'

33. In Ram Bali v. State of U.P. (2004) 10 SCC 598, the judgment in Karnel Singh v. State of M.P. (1995) 5 SCC 518 was reiterated and this Court had observed that: (Ram Bali case, SCC p. 604, para 12) "12. ... In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.'

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a "fair trial', the court should leave no stone unturned to do justice and protect the interest of the society as well.

(Emphasis supplied)

57. In ***State of Karnataka v. Suvarnamma, (2015) 1 SCC 323,*** *the Hon'ble Supreme Court held that "It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the*

prosecution case when there is overwhelming evidence to prove the offence."

(emphasis supplied)

19. In ***Mohabbat vs. State of M.P., (2009) 13 SCC 630***, Hon'ble Supreme Court has held that it is well settled that relationship is not a ground affecting the credibility of a witness, relevant extract of paragraph 11, 12 and 13.5 are quoted as under:

"11. Learned counsel for the respondent State on the other hand supported the judgment of the High Court.

"12. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version.

13. "5. ... Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

(emphasis supplied)

20. In ***Nirmal Singh and Another vs. State of Bihar, AIR 2005 SC 1265,*** the Hon'ble Supreme Court has held that if eye witness account is convincing on firing by accused or deceased, some infirmity in investigation like nonsending of blood stained cloth wrapped around the wound for chemical examination were not fatal to prosecution, para 16, 17 and 18 whereof are quoted as under:

"16. Counsel then submitted that the prosecution has failed to prove that the dalan of the deceased was the real place of occurrence. This submission is based on the fact that no blood stained earth was seized from the place of occurrence. It is true that no blood stained earth was seized from the place of occurrence but there is also evidence of several witnesses including the investigating officer that no blood had fallen on the earth. Eye witnesses explained that on receiving the injury the deceased pressed his wound with his hands whereafter a piece of cloth was tied around the wound which soaked the blood which may have come out. There was, therefore, no likelihood of the earth getting blood stained. Counsel for the appellants submitted that the intestines were protruding as described in the inquest report, and in such a situation there must have been some bleeding,. That may be so, but in view of the explanation offered by the prosecution witnesses it appears probable that no blood had fallen on the ground at the place of occurrence. In any

> *event, if some blood had fallen at the place of occurrence which the investigating officer failed to notice, that by itself will not be fatal to the case of the prosecution. We must observe that the investigation in this case has been most unsatisfactory and the investigating officer was not conscious of his responsibilities. The blood stained piece of cloth which was wrapped around the wound of the deceased appears to have been seized by the investigating officer, but when questioned as to why it was not sent for chemical examination, he answered that he had hung that piece of cloth on a guava tree in the police station. The statement is comical but discloses the utter non-seriousness with which the investigation was conducted. We had expected better from the investigating officer who was investigating a serious case of murder. However, for this reason we will not reject the case of the prosecution entirely.*
>
> *17. With these facts in the background, we have to consider whether the ocular testimony of Pws. 1, 3, 4, 5, 6, 8 & 11 should be discarded. It is no doubt true that the eye witnesses are related to each other but that is to be expected since the occurrence took place in the dalan of the house of the deceased. The evidence of the eye witnesses does not suffer from any infirmity, and appears to be convicting. No significant contradiction or infirmity has been brought to our notice.*
>
> *18. In these circumstances, we do not feel persuaded to discard the case of the prosecution only on account of some infirmities which we have noticed earlier. There appears to be no reason why so many eye witnesses should falsely implicate the appellants, and there is in fact, nothing on record to suggest that the witnesses had any reason to falsely implicate them."*

21. In ***Narendra Nath Khaware vs. Parasnath Khaware and Others, (2003) 5 SCC 488***, it was held by the Hon'ble Supreme Court that absence of bloodstains on the spot is of no consequence where there was no doubt about the actual occurrence having taken place and about the spot where it took place; relevant extract of para 7 whereof is quoted as under:-

> *"7. …………....Another factor which had weighed with the courts below is the absence of blood on the spot. This was explained as wholly of no consequence in the facts of the present case where there is no doubt about the actual occurrence having taken place and about the spot where it took place. It is also emerging from the record that the courtyard where the incident took place was open to sky and it was a rainy day. Therefore, as argued by the learned counsel for the appellant, the bloodstains might have been washed away."*

22. A reference may also be made in this regard to ***Ram Swaroop and Others vs. State of U.P., (2000) 2 SCC 461***, para 12 whereof is

quoted as under:-

> *"12. According to the learned counsel for the appellants, as no blood had collected or found on the platform, it is a serious infirmity in the case for the prosecution. This point was also urged before the High Court and the High Court rightly rejected this point on the ground that the victim were immediately taken to the police station and people were also moving here and there at the place of the occurrence. Therefore, by the time the investigating officer went to the place, even if blood had fallen on the ground, the officer could not have collected the blood."*

23. Same view was taken in ***State of Rajasthan vs. Satyanarayan, (1998) 8 SCC 404***, para 7 whereof is quoted as under:-

> *"7. Merely because no blood was found near the house of the respondent, it cannot be said that no incident took place there. The fact that kesar Lal had received a knife blow near his house was admitted by the accused though according to him the knife was with PW 2- Satyanarayan and not with him As the trial court has pointed out, the place was a public road and there was lot of traffic on that road. That could have been the reason why no blood was found when the spot panchnama was made after few hours. Moreover, the evidence discloses that intestines of Kesar Lal had come out and that could have blocked the flow of much blood. Some blood was absorbed by the clothes. Therefore, the circumstance that not sufficient blood was noticed when the spot panchnama was made should not have been utilised by the High court for holding that the prosecution version was not correct and that the defence version was more probable."*

24. As per the law discussed above, it is the duty of this Court not only merely discharge the function to ensure that innocent person is not punished but also that guilty person does not escape. Settled law is that both are public duties of the Court then alone law and order can be maintained. As held, for truly attaining this object of a 'fair trial' the Court should leave no stone unturned to do justice and protect the society as well. We are conscious of the fact that this appeal is of the year 1983, however, bound by the aforesaid duty, we proceed to record our findings.

25. As per the law discussed above, we find that the judgment of the trial court is wholly perverse and is not sustainable in the eye of law. We find that the approach of the trial court dealing with the evidence was patently illegal as the conclusion arrived at is wholly

unsustainable and requires interference. We also find that the evidence of the witnesses read as a whole has a ring of truth and the trial court has adopted a hyper technical approach by giving importance to some minor lapses committed by the Investigating Officer and on that basis rejected the evidence as a whole. The trial court has picked up sentences from here and there from the statements of the eye witnesses and has raised presumption regarding innocence of the accused. We are of the firm opinion that the entire judgment is based on complete misreading of the evidence and the same is purely based on conjectures and surmises and is perverse in nature. Therefore, as per the settled law, we are incline to reconsider the entire evidences on record.

26. We find that the first information report was lodged promptly without any delay. The incident had taken place at 1.00 pm and the first information report was lodged on the same day at 3.00 pm. The Investigating Officer promptly recorded the statement of the informant under Section 161 Cr.P.C. and proceeded to the place of occurrence and inspected the dead body and sealed the same. The bloodstained soil and plain soil were collected and recovery memo was prepared. One empty cartridge was recovered from the spot, recovery memo whereof was prepared as Exhibit-11. PW.1-Shiv Sharan Singh, who is the eyewitness of the incident and the real brother of the deceased had clearly stated that if they return from their field, house of the accused comes first and thereafter, would reach to his own house and by explaining the site plan he had clearly specified the spot where the incident had taken place. It is clearly stated that the residence of Ram Autar is in front of the house of Dashrath Dhobi and that of Goverdhan. He had also stated that his brother Babu Singh had slapped the sister of the accused while she was plucking gram leaves alonwith her mother. On this the mother and sister of the accused returned to their house abusing them and

after some time when they reached near the house of Ram Autar, Ram Autar came out and stood in front of his brother-deceased Babu Singh and said that since you have slapped my sister, he will teach him a lesson and took out a country made pistol from his waist and fired on the chest of Babu Singh. He had also stated that when he tried to move forward and started shouting then other villagers Goverdhan, Dasrath, Shiv Mohan, Layak Singh and Ram Raj came to the spot, who have seen the incident and when they tried to catch the accused, he reloaded the country made pistol, threatened the witnesses and ran away towards west. This clearly show that a categorical description of the spot, time and the manner in which the offence has been committed by the accused Ram Autar has been given by the PW-1, which also finds categorical support from the statement of PW-2-Dashrath. The aforesaid statement further reflects that the accused Ram Autar was prepared with his country made pistol to commit the crime and has actually committed the same. He further stated that after incident he removed his brother and placed him on the Chabutara of Goverdhan where he died. He had withstood the cross examination and had also stated the distance that Ram Autar fired from a distance of about four feets (Chaar Hath Ki Duri) away.

27. Similarly, PW-2 Dashrath, whose house is in front of the house of the accused- Ram Autar and spot where the murder was committed, had categorically proved his presence on the spot and has also given exact description of the place and the manner in which the offence was committed, which could not be dislodged by the defence witnesses. The informant as well as the prosecution witnesses after investigation was not shy in stating that when the deceased Babu Singh was fired upon he was standing on the Kaccha Rasta and immediately after being shot was shifted to Chabutara of Goverdhan where he died and where the dead body was found lying when the

Investigating Officer had reached the spot. PW-2 having proved his presence on the spot from the time much earlier to the time of incident had clearly stated that when the mother and sister of the accused Ram Autar came to the spot abusing the deceased they all went inside the house and accused Ram Autar came out after about 10-15 minutes and sat on Chabutara and when he saw Babu Singh coming, he rushed towards him blocked his way and repeatedly asking him why did he slap his sister, who did not answer the said question, thereafter Ram Autar took the country made pistol from his waist and fired on the chest of the deceased.

28. At this stage, we would like to refer to the post mortem report and the defence argument that the evidence has come that the deceased was fired upon from the front side but as per post mortem report deceased suffered injury on the left side, therefore, ocular account of prosecution version is not correct. We find that the incident has been clearly narrated that accused Ram Autar came in front of Babu Ram and stopped him from the front side and was repeatedly asking him why he had slapped his sister. It is quite possible that until the accused Ram Autar was asking him this question, he might have been standing straight, however, as a natural human reaction, when he had seen the accused taking out his countrymade pistol, he might have naturally turned side way and therefore, he suffered injury on the left side. This appears to be quite natural coupled with the fact that injury is on the chest and which by itself clearly proves that the accused Ram Autar has fired upon him with a clear intention to kill him, therefore, we find that this fact that the deceased suffered fire arm injury on the left side of his chest does not help the accused.

29. PW.3-Station House Officer-Madan Singh had clearly stated that he prepared Chick FIR and G.D. and had recorded the statement of the appellant in the police station and inspected the place of

occurrence where he found that the dead body of the deceased Babu Singh lying on the Chabutara of Goverdhan. He had prepared the panchnama and site plan was also prepared. He had proved that he has collected the bloodstained soil and plain soil from the spot. He had proved the recovery of empty cartridge from the spot. Thereafter, he searched the house of the accused where nobody was found but he recovered illegal cartridges from the house of the accused. On the next day, he had recorded statements of other witnesses. He had also proved that accused was absconding and proceedings under Section 82-83 Cr.P.C. were initiated against him and after receiving the warrants from the Court, he attached the goods of the accused and had prepared a 'fard' report dated 14.12.1982. He had also stated that during investigation he could not find sister and mother of the accused and had shown the place of occurrence as place "A" and no blood was found on that place and the dead body was lying on the Chabutara of Goverdhan. The distance between spot on Kaccha Rasta and Chabutara is extremely short, may be 3-4 paces. Therefore, place of occurrence of crime is very much ascertainable, more so, coupled with specific eye witness account.

30. Much emphasis has been placed by the learned counsel appearing for the accused respondents that blood was not found on the place of occurrence, i.e. Kaccha Rasta and therefore, the incident as alleged has not taken place and Ram Autar is not guilty of committing such murder. From perusal of the post mortem report, we find that there is a entry wound and margins were inverted and blackening was present. One big pallet (Chharra) was also found inside the chest. Normally, this kind of wound, if any fatal injury suffered without any exist firearm wound, blood would not immediately started oozing out as the big pallet might have blocked the blood from immediately oozing out from the injury and it has come in the evidence that after committing murder the accused

immediately reloaded his country made pistol, threatened the witnesses and ran away towards west side and immediately thereafter the body of Babu Singh was lifted from the place of occurrence to the Chabutara of Goverdhan. It is nobody's case that the murder had taken place at any other place except the place shown in the site plan, therefore, it is clear that if the defence version is taken to be true that the murder had taken place at some other place, it could not have been possible to bring the body of the deceased to the Chabutara of Goverdhan without there being any blood trail on the floor/passage/rasta etc. There is absolutely no evidence on record to prove or even to suggest that place of occurrence could have been different. The blackening present on the wound further supported the eye witness account of PW-1 that the deceased was fired upon in close range (Chaar Hath Ki Doori).

31. In the case of **Nirmal Singh (supra)** the Hon'ble Apex Court has held that in case if some blood had fallen on the place of occurrence, which the Investigating Officer has failed to notice that by itself will not be fatal to the case of the prosecution. Similar view has been expressed in **Narendra Nath Khaware (supra), Ram Swaroop and Others (supra)** and **Satya Narayan (supra)**. Therefore, in our opinion, even if the Investigating Officer has stated that no blood was found on the spot marked as spot "A" it would not help the defence. At the worst this could have been a case of defective investigation of which no benefit can be granted to the accused person when there is a direct evidence available on record. Therefore, the benefit granted to the accused that as no blood was found at place "A" the murder has not taken place in the manner as alleged is wholly perverse and in the totality of evidence available on record is not sustainable in the eye of law.

32. PW-4-Dr. Satish Chandara Srivastava has clearly stated that the death of the deceased was possible on 07.12.1982 at 2.00 pm due

to firearm injury. He has also stated that collected blood was found in the chest of the deceased and a big pallet was also found inside the chest.

33. In this background, this Court is of the opinion that the presumption raised by the trial court in granting benefit of doubt that since the informant and the deceased are the owner of agricultural field whereas the accused belonging to labour class, therefore, it is not understandable as to why the deceased Babu Singh slapped only sister of the accused, who was aged about 8-10 years and why he did not slap mother of the accused, is neither here nor there and it is only on this ground that the trial court has perversely drawn the presumption that the informant was not present on the spot by taking the sentence from the statement of PW-2, Dashrath, who is also an eyewitness that the deceased was coming alongwith his brother-PW-1-Shiv Sharan Singh when the incident had taken place and although he named the other witnesses namely Ram Raj, Layak Singh and that some other persons were gathered on the spot but as he has not mentioned the name of PW.1 alongwith the names of persons who have seen the incident. Therefore, presumption raised by the trial court that presence and hence, the testimony of PW-2-Dashrath was not worth belief is also highly perverse.

34. Another presumption was raised by the trial court that as the deceased Babu Singh was wearing only Kaccha (underwear) at the time of incident, therefore, it reflects his bad character due to which he was murdered, is also not reflected from the entire evidence on record. The incident is dated 07.12.1982 and it is of common knowledge that at times villagers usually used to roam around wearing only underwear particularly when they visit their field, hence that alone, without any evidence, is not sufficient to raise such presumption. Even otherwise, even such presumption of bad character of deceased, by no standard proves the innocence of the

accused.

35. In the statement of accused recorded under Section 313 Cr.P.C. he has talked about 'enmity' and at other place 'old enmity'. However, he had given no description of the enmity or old enmity as alleged by him, therefore, presumption raised by the trial court about enmity is also not sustainable in the eye of law.

36. The trial court observed that once the allegation was that the deceased Babu Singh has slapped sister of the accused while she was plucking gram leaves but still the Investigating Officer is not included the same in the site plan and has not recorded the same in his case diary is also *per se* illegal inasmuch this ground i.e. non-highlighting the aforesaid spot in the site plan would not have effected the prosecution case. Therefore, wholly irrelevant factor has been taken into account to grant benefit of acquittal to the accused. Admittedly, mother and sister of the accused Ram Autar were missing from the spot and since no allegation were levelled against them, therefore, this does not effect the merit of the investigation conducted by the Investigating Officer.

37. A presumption again raised by the trial court that villagers usually visit their field in the morning hours and thereafter usually take their lunch by 10-11 am and relax thereafter is neither here nor there when the time, spot and manner of the incident was clearly proved beyond doubt. In the post mortem report it is further reflected that semi digested food was present in the stomach of the deceased. The time of incident was at 1.00 o'clock and therefore, presence of semi digested food in the stomach was natural as the deceased must have taken something in the morning, which was present in his stomach in the shape of semi digested food.

38. We, therefore, find that the present judgment is purely based on presumption whereas direct evidence on record beyond any

shadow of doubt proves the manner time and place in which the incident had taken place committed by the accused Ram Autar.

39. The defence argument is also to the effect that PW-1-Shiv Sharan Singh is the real brother of the deceased and highly interested witness. Suffice to say that merely because the eyewitnesses are the family members there evidence cannot per se be discarded as held by the Hon'ble Apex Court in **Mohabbat (supra).**

40. We, therefore, find that the judgment of acquittal is patently illegal and the conclusion arrived at by the trial court is wholly untenable and requires interference and reversal. The evidence of PW-1-Shiv Shankar Singh and PW-2-Dashrath, who are the eyewitnesses clearly reflects ring of truth and proves beyond shadow of doubt that the accused Ram Autar has committed murder of Babu Singh and is liable to be convicted under Section 302 IPC.

41. We are also of the view that a crime has been committed in breach and violation of the public rights and duty and it is harmful to the society. We are, therefore, duty bound to maintain public confidence and administration of justice and to uphold the Majesty of law. We cannot turn a blind eye to the highly perverse judgment passed purely on the basis of presumptions and by not reading the evidence as a whole and only picking up sentences in isolation from here and there from the statements of eyewitnesses, we are, therefore, of the opinion that while being conscious that no innocent person is punished, we are also duty bound to see that a guilty person does not go unpunished.

42. Hon’ble Apex Court in ***Criminal Appeal No.327 of 2022 (Karan Singh vs. The State of Uttar Pradesh and Others),*** decided on 02.03.2022, had the occasion to consider the contingencies whereat a ground was taken by the accused that since a long span of time has elapsed and thus, it would not be proper to convict him,

however, the Hon'ble Apex Court in paragraph 47 has observed as under:-

> *"47. We find no grounds to interfere with the concurrent findings of the Trial Court and the High Court. The fact that the trial/appeal should have taken years and that other accused should have died during the appeal cannot be a ground for acquittal of the Appellant. The appeal is thus dismissed."*

43. Recently, yet in ***Criminal Appeal No.-- of 2022 (Arising out of Special Leave Petition (Criminal) No.-- of 2022, further arising out of Diary No.21596 of 2020, State of Rajasthan vs. Banwari Lal and Another,*** decided on 08.04.2022, the Hon'ble Apex Court in paragraphs 7 & 8 has held as under.

> *"7. At this stage, few decisions of this Court on principles for sentencing and tests for awarding an appropriate sentence in a given case are required to be referred to and considered.*
>
> *i) In the case of Mohan Lal (supra), the High Court modified the judgment and order passed by the learned trial Court and sentenced the accused to the period already undergone by him, which was only six days and absolutely no reasons, much less valid reasons, were assigned by the High Court. While setting aside the order passed by the High Court, this Court has observed in paragraphs 9 to 13 as under:*
>
> *"**9**. The High Court simply brushed aside the aforementioned material facts and sentenced the accused to the period already undergone by him, which is only 6 days in this case. In our view, the trial court and the High Court have taken a lenient view by convicting the accused for offences under Sections 325 and 323 IPC. Absolutely no reasons, much less valid reasons, are assigned by the High Court to impose the meagre sentence of 6 days. Such imposition of sentence by the High Court shocks the judicial conscience of this Court.*
>
> ***10**. Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the*

commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

***11**. This Court in Soman v. State of Kerala [Soman v. State of Kerala, (2013) 11 SCC 382 : (2012) 4 SCC (Cri) 1] observed thus: (SCC p. 393, para 27)*

> *"27.1. Courts ought to base sentencing decisions on various different rationales — most prominent amongst which would be proportionality and deterrence.*
>
> *27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint. 27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence. 27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.*
>
> *27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor."*

***12**. The same is the verdict of this Court in Alister Anthony Pareira v. State of Maharashtra [Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] wherein it is observed thus: (SCC p. 674, para 84) "84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."*

***13**. From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The court cannot afford to be casual*

while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance."

ii) In the case of Udham (supra), in paragraphs 11 to 13, it is observed and held as under:

*"**11.** We are of the opinion that a large number of cases are being filed before this Court, due to insufficient or wrong sentencing undertaken by the courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.*

***12.** Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).*

13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach."

In the said decision, this Court again cautioned against the cavalier manner in which sentencing is dealt with in certain cases.

iii) In the case of Satish Kumar Jayanti Lal Dabgar (supra), this Court has observed and held that the purpose and justification behind sentencing is not only retribution, incapacitation, rehabilitation but deterrence as well.

8. Applying the law laid down by this Court on principles for sentencing, to the facts of the case on hand, we are of the opinion that the approach of the High Court is most cavalier. Therefore, the order of the High Court merits interference by this Court. Merely on the technical ground of delay and merely on the ground that after the impugned judgment and order, which is unsustainable, the accused have resettled in their lives and their conduct has since been satisfactory and they have not indulged in any criminal activity, is

> *no ground not to condone the delay and not to consider the appeal on merits. Hence, the delay of 1880 days in preferring the appeal is condoned."*

44. Applying the principles of law so laid down in the case of ***Karan Singh (supra)*** and ***Banwari Lal (supra)*** an inescapable principle of law stands culled out that merely after lapse of sufficient time coupled with other factors, namely, the age of the accused and his resettlement, if any post acquittal by the trial court, cannot be a ground to bestow any benefit so as to wipe away the aftermath of commission of crime.

45. In view of the aforesaid discussion, the instant appeal stands **allowed**. The judgment and order dated 26.07.1983 passed by the Learned Special Judge, Fatehpur in Session Trial No. 104 of 1983 (State vs. Ram Autar Kori), arising out of Case Crimes No. 172/1982, under Section 302 IPC, Police Station Khakhreru, District Fatehpur, acquitting the accused-respondent-Ram Autar s/o Ram Swarup Kori is set aside and reversed. The accused-respondent-Ram Autar s/o Ram Swarup Kori is held guilty of committing offence punishable under Section 302 IPC.

46. For the offence under Section 302 I.P.C., the accused-respondent Ram Autar s/o Ram Swarup Kori is sentenced to undergo simple imprisonment for life and to pay a fine of Rupees Twenty Thousand Only (Rs. 20,000/-) and if he fail to pay the amount of fine, he shall have to undergo imprisonment for a period of six months in lieu thereof.

47. The accused-respondent -Ram Autar s/o Ram Swarup Kori is directed to surrender before the learned Chief Judicial Magistrate, Fatehpur within a period of 15 days from the date of this order to serve out the sentence awarded to him. In case he does not surrender within the stipulated time, learned Chief Judicial Magistrate, Fatehpur shall commit him to custody as per law.

48. Let a certified copy of this judgment and order be sent to the Court concerned immediately for ensuring its compliance.

Order Date :- 12.9.2022

Nitendra

Digitally signed by NITENDRA
TIWARI
Date: 2022.09.12 16:30:26 IST
Reason:
Location: High Court of Judicature at
Allahabad